DOCUMENT RESUME

ED 135 323 HE 008 694

AUTHOR	Bender, Louis W.
TITLE	Federal Regulation and Higher Education. ERIC/Higher Education Research Report Number 1.
INSTITUTION	George Washington Univ., Washington, D.C. ERIC Clearinghouse on Higher Education.
SPONS AGENCY	American Association for Higher Education, Washington, D.C.
PUB DATE	Mar 77
NOTE	88p.
AVAILABLE FROM	Publications Department, American Association for Higher Education, One Dupont Circle, Suite 780, Washington, D.C. 20036 ($3.50)
EDRS PRICE	MF-$0.83 HC-$4.67 Plus Postage.
DESCRIPTORS	Administrative Problems; Costs; Educational Accountability; *Educational Administration; *Federal Government; *Federal Legislation; Financial Support; Governance; *Government Role; *Higher Education; Literature Reviews; Program Administration
IDENTIFIERS	Autonomy; Buckley Amendment; *Federal Regulation

ABSTRACT

Federal funds are an essential component to the fiscal vitality of higher education; however, in recent years the award of these funds has been contingent on complying with federal regulations. This monograph explores the nature of regulatory practices to determine if federal regulations have altered governance patterns or infringed on institutional autonomy. First, the evolution of federal influence on higher education since 1936 is reviewed, with a detailed discussion of regulations in effect since 1970 (including affirmative action, student financial aid, institutional aid programs, the Buckley Amendment, and categorical aid). There is discussion of how regulations are written, federal accountability versus institutional autonomy, recommendations for reform, costs to institutions, resultant program changes, and the implication of federal regulations for higher education administration in the future. An extensive bibliography is included. (Editor/MSE)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

Federal Regulation and Higher Education

Louis W. Bender

1977

ED135323

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

2

Federal Regulation and Higher Education

Louis W. Bender

ERIC/Higher Education
Research Report No. 1
1977

Prepared by the
ERIC Clearinghouse
on Higher Education
The George Washington University
Washington, D. C. 20036

Published by
The American Association
for Higher Education
One Dupont Circle, Suite 780
Washington, D. C. 20036

This publication was prepared pursuant to a contract with the National Institute of Education, U. S. Department of Health, Education and Welfare. Contractors undertaking such projects under government sponsorship are encouraged to express freely their judgment in professional and technical matters. Prior to publication, the manuscript was submitted to the American Association for Higher Education for critical review and determination of professional competence. This publication has met such standards. Points of view or opinions do not, however, necessarily represent official views or opinions of either the American Association for Higher Education or the National Institute of Education.

Acknowledgement

The author gratefully acknowledges Fred Harcleroad, chairman of the Department of Higher Education, University of Arizona, and Richard M. Millard, director of Postsecondary Education, Education Commission of the States, who assisted in developing the conceptual framework for this study. Also, Jonathan D. Fife rendered invaluable assistance by collecting conference papers, reports and other unpublished papers dealing with various aspects of federal regulations and higher education. Similarly, the author is indebted to Dr. Robert Wright, chairman of the Work Group of the Secretary of Health, Education, and Welfare who provided materials and kept the author informed of current developments related to the topic. Officials with the National Association of College and University Business Officers were also helpful in the information-collecting stages of the study.

Three individuals who gave freely of their time to review the initial draft and make comments on its organization and content were James Vickrey, executive assistant to the Chancellor for the State University System of Florida; Robert Bickel, university attorney for Florida State University; and Wayne Freeberg, executive director of the Florida Board for Independent Colleges and Universities. Their contributions are deeply appreciated.

Foreword

Federal funds are an essential component to the fiscal vitality of higher education. However, in recent years the award of these funds has been contingent on complying with federal regulations. This monograph explores the nature of regulatory practices to determine if federal regulations have altered governance patterns or infringed on institutional autonomy. To do this the author first reviews the evolution of federal influence on higher education in this country from 1636 to the present, with a detailed discussion of regulations in effect since 1970. This includes discussion of affirmative action programs, student financial aid, institutional aid programs, the Buckley Amendment, categorical aid, and others. There is also discussion of how regulations are written, federal accountability versus institutional autonomy, and recommendations for reform. Other topics considered are the cost to institutions of implementing federal regulations; whether program changes have been caused by these regulations; and the implication of federal regulations for higher education administration in the future. Among the reform strategies is the suggestion that a higher education Magna Carta be formulated that establishes fundamental rights and privileges to be guaranteed by state and federal legislative bodies. It is emphasized that higher education associations will have to subsume their own special interests to ensure that the general welfare of higher education can be realized. Louis W. Bender is director of the State and Regional Higher Education Center and professor of higher education, College of Education, at the Florida State University, Tallahassee.

Peter P. Muirhead, Director
ERIC/Higher Education

Contents

Overview 1
Introduction 4
Recent Studies 4
Setting the Stage 9
Summary 10
The Issue of Regulation and Overregulation 12
Regulation and School Districts 14
Higher Education 15
Summary 17
Evolution of the Federal Presence 19
Stage One: (1636-1862) 19
Stage Two: (1862-1945) 21
Stage Three: (1945-1970) 23
Summary 28
The Contemporary Scene: Since 1970 30
Discrimination and Affirmative Action 30
Other Employment Practices 34
Student Financial Aid 35
Rights of Privacy 42
Categorical Aid Programs 43
Other Federal Programs 45
Summary 46
Different Perspectives: Government and the Academy 47
The Issue of Authority 47
The Issue of Accreditation 50
The Legislative Issue 51
The Issue of Regulation Writing 53
Summary 56
Federal Accountability Versus Institutional Autonomy 58
Accountability 59
Institutional Autonomy 62
Summary 67
Some Recommendations 68
Magna Carta for Higher Education 69
National Associations 70
Regulation Reforms 71
Educational Impact Statement 72

ACE Task Force 72
An Institute for Independence 73
Bibliography 74

Overview

Colleges and universities represent a special condition or circumstance in the national problem of governmental regulation and control. Higher education has become more legalized and more politicized and legislative bodies are increasingly treating the academy as if it were any other part of the business or industrial complex. The courts also have increasingly ignored the sanctity of the academic community.

In this study a description of the evolution of the federal presence is provided that documents the historic federal posture of higher education as being external to governmental control; the right of self-determination is a principle that guided Congress, even when enacting landmark legislation, such as the Morrill Act of 1863, the Servicemens' Readjustment Act of 1944 (the G.I. Bill), and the National Defense Education Act of 1958. Also, the contemporary state of higher education is examined with reference to the period since 1970, when by Congressional policy and accompanying regulation from the Executive Branch colleges and universities found federal mandates influencing policies related to student admissions, academic programs, employment, faculty, physical plants and facilities, and even the collection and use of information files. This study portrays a shift in federal posture, whereby higher education, which had been viewed as outside the federal purview, came to be accepted as a national resource; more recently, however, it has been perceived as though it were an instrument or tool of federal policy.

The basis for federal involvement in higher education is then examined, and some of the emerging applications of power are identified. Students of the U.S. Constitution generally describe the Federal Government as having limited powers, as contrasted to the general powers of state government. Two of those limited powers provide the basis for federal involvement with colleges and universities. The *spending power* under the general welfare provision of the Constitution enables the Federal Government to make monies available to colleges and universities through grants or contracts. The control factor derives from the ability of Congress to establish conditions or requirements to be met by recipients of such federal funds. Colleges and universities could, therefore, avoid many federal regulatory requirements simply by refusing federal funds. The dilemma confront-

ing many institutions, however, has emerged only as the magnitude of federal programs and funds has grown to the point of institutional dependency. Many public and private colleges and universities simply cannot afford to cut off federal funds without it having a devastating impact on their financial base.

A second and more recently emerging federal authority being applied to higher education is the *commerce power,* which is derived from the interstate commerce provisions of the Constitution. Authority of the Federal Government to regulate labor and management relations in private institutions has now been established through the National Labor Relations Board. Federal regulation over wage-and-hour standards now applies to employment within all public and private institutions; more recently, the same powers have become the basis for consumer protection efforts related to advertising and public information.

The legal aspects of federal regulation are not as much challenged by the advocates of the special nature of the academy as the "spirit" or value inherent in the Constitution. Our nation stands on the principle that desired ends, no matter how worthy, do not justify unworthy means; hence, the social goals of federal policy, while universally accepted as worthy ends, do not justify the coercive powers employed through federal regulation to generate uniform and universal compliance among higher education institutions. It has been observed that the states historically observed a type of "self-denying ordinance" by staying out of the internal affairs of colleges and universities, to a great degree in spite of the general powers (including "police powers") of the state. It is argued that the peril of federal regulation lies not so much in matters of paperwork, costs, administrative inconvenience and related burdens, which have received considerable publicity; the fundamental issue is whether the future will see the perpetuation of an academically free complex of public and private colleges and universities, or the emergence of a national system of higher education. Will there be an academy that reflects diversity and excellence generated by an array of public- and private-sponsored institutions or a national educational utility comprised of uniformly regulated units that will lose their identity as well as their distinctiveness as the press for consistency and uniformity generates sameness and mediocrity?

Concepts of accountability embraced by federal policy-makers and officials are discussed and contrasted with the views of educators toward the question of institutional autonomy. Many in higher education are operating in an "either-or" mode antithetical to the nature

of legislative compromises. Extremists of institutional autonomy unrealistically view the desired federal role as that of patron. On the other hand, Congress has come to view colleges and universities as instruments of national policy, which is antithetical to the basic tenets of higher education in America. It would appear that a compromise offers the best hope; if academe acknowledges its responsibility to provide appropriate indications of accountability in using federal funds, then Congress might reaffirm the special nature of academe as well as the need to protect the delicate balance of academic and fiscal integrity.

Recommendations for consideration by higher education leaders and the federal officials are given. An immediate challenge is made to colleges and universities to acknowledge their role in creating and perpetuating many of the social ills now being addressed by national policy and federal regulation. A commitment to correct those ills must be made with sufficient assurance that government does not have to monitor and certify in intricate and detailed ways. Also, higher education should be permitted to shift its accountability processes to focus on more realistic, end-product reportage.

Introduction

In the early stages of research on federal regulations and their impact on higher education, a thorough search of the literature was undertaken. In this regard, the ERIC Clearinghouse for Higher Education proved to be particularly useful, for it revealed a dearth of published materials on the subject. Therefore, an attempt was made to identify institutional reports and other fugitive literature that might aid in the research. A personal letter was prepared and mailed to 76 presidents of colleges and universities throughout the nation and to a dozen national association executive directors. The letter explained that information was being sought that could aid in answering such questions are: Have federal regulations altered traditional governance patterns of the institution? Have federal regulations clearly infringed upon institutional autonomy? What is the cost to comply with regulations? Have any program modifications or changes been caused by federal regulations? and What are some of the implications for future higher education administration?

The letter was mailed August 30, 1976 and no follow-up mailing was conducted. An unexpectedly high response rate resulted in replies from all but six institutions and all but two associations. More startling, however, was the fact that almost all respondents reported no internal institutional studies had been conducted on the cost or impact of federal regulations, although nearly every letter gave strong, enthusiastic encouragement for this study. One respondent called federal regulations "one of the most urgent and critical problems confronting higher education today." In many cases when institutions did submit internal papers or reports, little documentation or factual data related to costs, program changes, or governance modifications was provided. Most documents were position papers that merely represented the opinions of their authors. Institutions that provided reports of documented studies have been used in this paper. It is quite clear that the higher education community has much homework to do before it can realistically storm the halls of Congress with rational argument and documentation of the true nature and scope of the impact of federal regulations on higher education.

Recent Studies

At least five different organizations conducted studies during 1976

among colleges and universities on the problem of federal regulations. The American Council on Education (ACE) sponsored a study that dealt with the economic costs of federally mandated social programs. The Commission on Colleges of the Southern Association of Colleges and Schools (CC/SACS) conducted a survey of all its member institutions on institutionally-identified problems and issues related to federal regulation in preparation for the SACS annual meeting. The Council for the Advancement of Small Colleges (CASC) carried out a survey of its member institutions in preparation for its 1976 National Institute, where the major theme was federal programs and regulations and their impact upon small colleges. The fourth study, carried out at the direction of the Secretary of the Department of Health, Education, and Welfare, was a work group made up of 10 men and women representing public and private institutions and several national organizations concerned with higher education. Its purpose was to make recommendations for consolidation and simplification of federal reporting requirements for institutions of higher education. The fifth organization to sponsor a study was the National Association of College and University Business Officers (NACUBO). It also sponsored a study group concerned with federal paperwork.

ACE Study — The ACE study examined the cost to colleges and universities of implementing federally-mandated social programs imposed upon all business entities. The study excluded all laws and regulations specifically intended for educational institutions, such as those dealing with affirmative action and discrimination and privacy, and the various higher education provisions. The study further was delimited to those programs in which the Federal Government does not supplement or otherwise absorb the costs to the institutions of administering or carrying out federal programs. Hence, the study was primarily directed toward social security taxes, unemployment compensation, equal pay, wage-and-hour standards, retirement benefits, occupational safety and health, and environmental protection. A case-study approach was used on a sample of six types of institutions. One of the significant findings was that between 1 percent and 4 percent of operating budgets for the various institutions was required to meet the costs of federally mandated social programs. It was observed that such a portion of the budget is particularly high in a time of concern with such factors as income from endowments and gifts on the part of private institutions, institutional funds used for student financial aid, budgets for some academic departments faced with extinction because of institutional budget priorities, and even the operating deficit suffered by some institutions in recent years. The study re-

ported that costs of implementing the federally mandated social programs have doubled over the last five years, even faster than the rate of increase of the cost of instruction. As far as the impact upon the organization and governance of the institutions studied is concerned, it was reported that the federally imposed requirements tended to accelerate centralization of administrative functions within institutions, one of the most frequent laments over the past decade.

> The results of this study suggest that implementing federal policies with respect to social justice, manpower, science, defense, and taxation has a far greater financial impact on higher education than does any explicit and coherent federal policy in support of higher education. Some of the effects from policy in the area of national interests outside of education are intended, some are unintended, and some are scarcely recognized (Van Alstyne and Coldren 1976, p. 15).

CC/SACS Study — In the survey study of the Commission on Colleges of the SACS, the Executive Secretary addressed a letter to the presidents of member institutions for the purpose of soliciting cost estimates and documented descriptions of

> . . . the extent to which the federal government has injected itself into the operations of your institution via compliance requirements in such areas as: Title VII, Title IX, OSHA-Health and Safety [sic], Eligibility for Federal Funding for institutional and Student Grant Programs, Department of Labor Regulations, Internal Revenue Service Regulations, Buckley Amendment Regulations, Termination of Employment, EEOC or OCR [sic], and instances of cancellation of the flow of federal funding by federal agencies without notice of hearing (Special Report 1976, p. 1).

The Executive Secretary also invited the respondents to describe any unfair or arbitrary treatment from the federal agencies or their officials. A compilation of the institutional responses was published and made available to all participants during the annual meeting of SACS held in Atlanta in December 1976. Unfortunately, the report consisted primarily of a compilation of comments and testimony and did not provide any cost data information, thereby indicating that respondents in most cases simply had no basis for placing a dollar amount on the costs of compliance. (This was consistent with the results of the survey conducted for this study.)

The CC/SACS study report revealed near unanimity among all respondents that the burden of compliance was growing and adversely affecting the quality of educational programs and the amount of education planning that institutions can devote to their own purposes. The majority of the respondents did not feel they had been

treated unfairly, although a few examples of arbitrary and capricious actions by federal officials were reported. Concern was expressed regarding ambiguity of guidelines, timing of reports, overlapping and sometimes competing agency roles and functions, and instances of inconsistent interpretations from among the various government agencies.

Some fundamental philosophical concerns were also expressed, with some respondents declaring that federal regulations force uniformity and standardization that could be detrimental to a diversity among institutions of higher education. Nearly all of the respondents were of the opinion that the escalation of compliance requirements, proliferation of overlapping and duplicating agency jurisdictions, and data collection, storage, and reporting have all approached the point where it is "critical for the higher education community and its regional and national organizations to act promptly and strongly" (CC/SACS, December 1976, pp. 3-4).

Delegates attending the December CC/SACS meeting proposed a resolution be adopted by the member institutions of the Commission on Colleges of SACS to formally register their concern and seek remedial action from the President of the United States, members of the Cabinet, members of Congress, and administrators in the Federal Government. The delegates requested a reduction in the data and information requirements, a consolidation of federal agencies involved in collecting data, consistency in applying federal regulations, attention to the financial burdens of reporting, and recognition of the danger of federal intrusion into the independence of educational program policies of colleges and universities.

CASC Study — The Council for the Advancement of Small Colleges (CASC) developed a voluminous "resource notebook" in preparation for its 1976 National Institute. The resource notebook included reprints of selected articles and general readings that dealt with federal regulations and their impact on institutions of higher education as well as reports of six study groups that addressed: (1) federal student aid; (2) federal institutional aid; (3) federal categorical programs; (4) federal regulations on discrimination issues; (5) federal regulations on other topics, including accreditation, consumer protection, privacy, tax reform, Veterans' Administration, and copyright law; and (6) the Higher Education Amendments of 1976. A survey of member institutions of CASC was conducted to determine the number and nature of complaints of employment discrimination filed against such institutions. Eight of the member institutions reported being cited; one for alleged racial discrimination, four for alleged sex

discrimination, and three on charges of unequal pay. Only six of the cases were investigated, since two subsequently were withdrawn or handled separately. The experiences with the federal agencies as reported by the CASC institutions included charges that some of the investigators used heavy-handed methods, and one investigator seemed not knowledgeable on the laws administered by his agency. Moreover, all six institutions reported heavy demands on administrator time involved in completing questionnaires and in providing data for the investigations (Martens 1976, pp. 34-38).

HEW Study — The HEW Secretary's Work Group made fifteen recommendations for use by the Inter-agency Task Force of HEW towards the goals of reducing the complexity and costs of institutional reporting to the Federal Government. Some of the recommendations entailed organizational changes: the consolidation of all collection, dissemination, and storage of general information statistics for higher education by one single agency, and extension of a "cognizant agency concept," whereby all higher education would be under a single agency's cognizance for any given topic. Other recommendations were related to more specific and realistic regulation writing, elimination of paperwork duplication, input from higher education in all regulation development, and the elimination of patchwork approaches to higher education policy. Finally, the work group called for case studies of burdensome reporting requirements imposed by legislation in order to demonstrate to congressional committees the burdens of poor congressional action (1976).

NACUBO Study — The federal paperwork study group sponsored by the National Association of College and University Business Officers (NACUBO) dealt with: (1) government forms that were complex, duplicative, or superfluous; (2) identification of federal reports that provided unreasonable time constraints or deadlines; and (3) federal forms that required unrealistic and unnecessary data. Meticulous analysis of numerous federal forms was carried out, specific items noted for challenge, and recommendations were made.

The intensity of criticism and concern directed toward the proliferating federal regulations, reflected in the studies above, can be primarily identified with the 1976-77 academic year. More articles, position papers, studies, and conferences directed toward the problem of federal regulations were developed in the academic year 1976-77 than in all the previous five years combined. However, the public outcry of institutional representatives was not the only response. The problem had become so acute that a number of institutions outlined radical plans. Brigham Young University announced it would refuse

to comply with portions of federal affirmative action regulations, and Hillsdale College in Michigan threatened to refuse admission to all students having federal financial aid because of the insistence of federal officials that student-centered federal support justified HEW enforcing its rules and regulations upon the college. Four universities in the Washington, D.C. area made a "1976 Declaration of Independence," in which they listed what they considered to be threats to the very foundation of private university governance represented by the growing federal intrusion. They declared their institutions would give serious consideration to refusing future federal monies or to complying with portions of federally prescribed regulations. An editorial in *Change* magazine observed: "In our view, little doubt remains that, should present trends of governmental overkill continue, what was once among the freest of institutions will soon join those now constrained. . . . The time has come, we believe, to regulate the regulators" (*Change*, Winter 1975-76, p. 10).

Setting the Stage

Too often in addressing the dimensions of a problem as complex as the relationships between governmental agencies and educational institutions the negative becomes so accentuated that there is danger of forgetting the positive benefits and aspects involved. There are many public and private colleges and universities that in large measure owe their greatness to federal programs and funding. Following World War II, the phenomenal growth in numbers of institutions, in size of student enrollment, in scope and range of programs, and in research activities would not have come about if there had been no federal presence and higher education had remained the sole province of the states. It takes little imagination to envision what the various states would have invested in research and graduate education or in areas of undergraduate study if higher education had been treated as the sovereign province of the state. It is not only apparent that federal support contributed to the past development of higher education, but with estimates of $15 billion in federal funds for higher education in fiscal year 1976, it is also apparent that it is an essential component to the fiscal vitality of higher education today. Therefore, it is not surprising that colleges and universities, particularly the historically independent sector, have not been willing to refuse federal dollars for the sake of being free from federal regulations and administrative burdens.

There are several deliberate omissions in this study that need to be acknowledged. First, the study concentrates upon the Federal

Government, federal agencies, and federal regulations, and does not attempt to address the problems associated with state government and its regulations and requirements. There is a growing literature on the drift toward state control of higher education as well, and the reader should give attention to that dimension of the challenge to institutional self-determination. Glenny (1959), Berdahl (1971), Eulau and Quinley (1970), Halstead (1974), Bender (1975), Harcleroad (1975), and Millard (1976) address different aspects of the state presence more directly. References are included in the bibliography at the end of this report.

A second significant delimitation of this study is its focus upon the traditional concept of higher education that would limit the institutions under consideration to collegiate, degree-granting colleges and universities. This is particularly important to recognize in view of the obvious posture of the Congress to broaden the arena that has become identified as postsecondary education in the Education Amendments of 1972, and is even further broadened in the provisions of the Education Amendments of 1976. This study does not examine the issue of the Federal Government and its regulations from the perspective of proprietary schools, nontraditional, external degree-granting mechanisms, and other noninstitutionalized modes of education beyond high school that have come to be accepted by the Federal Government in its deliberations and decisions affecting programs, policies, and funding. The broader spectrum of postsecondary education complicates considerably the problem of addressing the federal interface with higher education.

The recommendations given might seem inconsistent in view of the limited focus just described. Yet, it is the central argument of this study that traditional higher education represents a unique institution of our society toward which attention and action must be directed if America is to preserve it.

Summary

The problem of the growing press of federal regulation upon the structure and management of colleges and universities, as well as the threat of federal directional policies upon self-determination of the academy, has become so alarming that higher education leaders have begun to act publicly against the threat. Unfortunately, they are being caught with relatively little documentation to support their arguments. Thus, most public testimony to date has relied heavily upon the idealism that historically produced the structure of a diverse complex of colleges and universities, which included the pro-

vision for a board of control insulating the institution from any political domination. Although such arguments still have force, it is clearly the case today that the audiences of higher education, whether interest groups within society or members of Congress, are more tuned to the pragmatic approaches of the day and, therefore, tend to scoff at any argument unsupported by statistical data and not meeting the requirements of current accountability demands.

The bicentennial year may well have appropriately triggered an alarm for higher education to reassess itself in light of contemporary conditions and expectations. The development of substantial, co-ordinated research into the actual impact of federal policies and regulations must begin immediately. The few studies that have been carried out are admittedly of limited scope, but already document the need for more serious attention and concerted efforts from the higher education complex.

The Issue of Regulation and Overregulation

> Federal regulation has risen to the status of a major public policy issue, along with unemployment and inflation. Together they constitute a larger issue; the role and size of government in our society (Van Alstyne 1976, p. 16).

An immediate question, seldom expressed but clearly implied, is Why have regulation in the first place? The popular view is that thousands of government employees literally justify their existence by either developing new or revised regulations or by handling voluminous paperwork and carrying out investigations as part of the enforcement process. However, in actuality most governmental employees are sincere, conscientious, and "caring" individuals who also daily experience the frustrations and inconvenience, or even intrusion, caused by government regulation. Subconsciously, it seems, most of us have forgotten the important fact that a regulation is an indispensable element of our local structure used to facilitate or implement desired legislative goals or objectives.

A regulation is the cement that binds the policy goal of a statute to the groups affected by the policy. Regulation provides rules to foster order and method to carry out the objectives, as well as uniformity, which is designed to assure that all are subject to and abide by the same conditions. If there were no regulations to provide the "rules of the game," quite different interpretations would result and chaotic approaches would be employed by those affected.

A simple example may point out some dimensions of regulation and overregulation. At the time of the energy crisis resulting from the oil embargo, a national goal was to reduce petroleum consumption and thereby move from foreign oil dependence to a posture of self-sufficiency. The regulation imposing a 55 m.p.h. speed limit was one of many intended to accomplish the conservation goal. Without such a regulation, there would have been little sustained pressure for reduction of gasoline consumption in the absence of rationing or some similar curtailment. However, one of the undesirable by-products of regulation is also revealed in this example. While intended to assure uniform compliance and thus, theoretically, equal treatment of all affected classes, enforcement of a uniform standard on unequal classes inevitably results in inequitable treatment. While few disagreed with the goal of responding to the oil embargo and con-

serving energy, the 55 m.p.h. affected different groups in different ways. For the casual driver or sightseer the new speed limit opened up new pleasures of actually seeing much of the landscape that earlier had been merely a passing blur. For bus drivers confronted with time schedules and the requirement to compensate for unanticipated delays, the speed limit was more than an imposition. And for many independent truckers, whose livelihood depended upon rapid delivery and quick turn-around time, the regulation was viewed as a potential catastrophe. It is not surprising, therefore, that the truckers fought the intrustion of this regulation into their business activities by resorting to blockades and strikes, and subsequently created the citizens-band-radio phenomenon, which encompassed an entirely new vocabulary and ingenious strategies for "bending" the regulation to accommodate their perceived special condition.

The tentacles of federal regulation reach into the daily lives of every citizen in the country. According to Sylvia Porter (1976), in 1974 alone there were approximately 25,000 federal regulations issued requiring 5,146 different federal reporting forms. To complete these forms it is estimated that approximately 130.5-million work hours were consumed, and an incredible complement of almost 74,000 federal employees were required to handle the paperwork at the federal level alone. In the view of former Secretary of the Treasury William E. Simon, federal regulations have come to the point of even tying the hands of the country itself. Simon blames federal regulation as the reason this country, which could put a man on the moon within 10 years, still cannot come to grips with the energy crisis. According to Simon, it takes 10.5 to 11 years to build an atomic power plant in the United States versus 4 to 4.5 years needed in Japan or Europe. This is the result of the incredible plethora of agencies and regulations involved in such efforts in the United States. Additionally, costs of building a nuclear plant are increased more than a billion dollars because of such controls (*U.S. News & World Report*, December 13, 1976, p. 13).

The costs of maintaining the federal regulatory agencies are estimated at more than $3 billion a year. This figure does not include compensation paid employees in the private and public sectors for filling out the federal forms at local levels. Sylvia Porter, syndicated financial columnist, reports compliance costs for General Motors Corporation approximates $1.3 billion annually. James L. Hayes, president of American Management Association, has observed, "We are on the verge of what amounts to a regulatory crisis . . . it's a nightmare for all concerned, especially for the consumer, because the con-

sumer pays for the regulation." The American Management Association (AMA) sponsored a national conference in Washington, D.C. in December of 1976 with the hope of generating "meaningful regulatory reform." Participants at the conference included representatives from business, industry, consumer groups, and government officials (Porter 1976, p. 6). It is too early to tell if the conference purpose will result in constructive measures being taken.

Regulation and School Districts

While federal regulation is typically identified with business and industry enterprise, it has come to permeate education as well. Education at all levels is deeply involved with the Federal Government and, in spite of the historic state-locus-of-responsibility view, elementary and secondary education in the United States has, to a great extent, become a national enterprise. Such intrusion of the Federal Government has occurred in spite of the fact that 90 percent of the financial support of all public schools in the nation still comes from state and local taxes. An astronomical and disproportionate growth in federal regulations has taken place for a comparatively small amount of the total cost of education provided. The fear is clearly that the United States will find itself with a centralized system.

> The pleas for 'local controls' or the slogan, 'education belongs to the state,' may be uttered, even shouted, back home. But slowly, inexorably, and incrementally, the federal government is taking over education. Especially since 1965, the country has moved almost every year toward a national system of education (Cronin 1976, p. 500).

The historical resistance, even aversion, of Americans to a national ministry of education led to the design of a structure intended to avoid any federal takeover. State departments of education historically provided the interface with local school districts. Now, dependency upon federal funds has made the structure almost meaningless. Since 1965, state departments of education have become so dependent upon federal funds that as much as 40 to 80 percent of the state budget for staffing departments of education actually comes from federal funds. In most states 50 percent or more of the employees of state departments of education are paid by federal funds and more than a third have daily duties and responsibilities that require them to be loyal to the goals of federal direction and regulation first and state goals second. Most professional staffs of vocational-technical education in state departments of education are supported by federal dollars. The

same is true of personnel responsible for administering all the federal Titles for education (Halperin 1976).

This dependency upon federal dollars in support of personnel created some unusual retrenchment problems during the recent recession. For example, in Florida, the legislature directed the Department of Education to reduce its complement by 10 percent. But applying that formula to the number of all employees would result in considerable dislocation, since the number to be terminated would have to come from those employees in state-funded positions only. Those supported by federal dollars were immune to layoffs unless federal programs were terminated as well. Some legislators found it difficult to accept the fact that they could not direct their policy at all employees in the department.

Higher Education

In view of the federal presence in business, industry, and in elementary and secondary education, it might seem logical that higher education should also come under the same wing. Higher education in America, particulary the private sector, traditionally has been valued by society as a domain that should not be interfered with or controlled by any government except to protect the public interest (e.g., accreditation requirements). Self-determination, with lay persons serving on boards of trustees, as well as a societal commitment to preserve a vital and dynamic private and independent sector have resulted in an array of diverse and dynamic institutions, ranging from research-oriented universities and graduate institutions to baccalaureate and professional colleges to two-year colleges.

Historically, the Federal Government has exercised virtually no influence over higher education. While the fragmented pattern of programs and agencies contributed to administrative confusion by 1960, charges of overregulation and intrusion into self-determination were not then being made. An interesting contrast can be observed in two Harvard reports. Following a 1961 self-study concerning Harvard and the Federal Government, it was noted:

> The federal government has clearly not interfered in the direction of Harvard's research projects. It has certainly sought to encourage, in fields colored by a national interest, research which our faculty members wished to undertake. The variety of sources of support helps make it possible for a distinguished scientist in a respected institution to obtain backing for his research on terms acceptable to him and his university. The image of a coercive government dictating what shall and shall not be done in university laboratories and libraries simply does not fit Harvard's experience with Washington . . . from the point of view of the universities,

> it may be better to live with the difficulties of the present disorganized system than to increase the risk of political interference with university independence by putting all our eggs in one basket. . . (Cheever, 1962, p. 135).

In stark contrast, President Derek C. Bok directed most of his 1974-75 annual report to the relationship with the Federal Government, calling it "one of Harvard's greatest problems in the next generation." He observed, "within the last eight years . . . the government has begun to exert its influence in new ways. . ." (Bok 1975, p. 1).

The magnitude of federal intrusion into higher education can be seen in the nearly 400 federal programs now directly affecting higher education. Standards, criteria, program guidelines, regulations, and audit requirements are generated by nearly 50 executive agencies and several dozen congressional committees. In 1972, the United States Office of Education (USOE) published 32 documents in the *Federal Register* to promulgate proposed regulations and related notices. In 1976, the USOE alone published 270 documents in that same publication. If the rate of increase were to continue, USOE would be generating one document per institution within five years (Cheit 1975, p. 32). "Even a $5,000 federal grant can have attached to it regulations covering 100 or more pages of bureaucratic fine print" (U. S. News & World Report, July 5, 1976, p. 13). A law enacted by Congress covering three or four pages can result in thousands of pages of regulations.

Since laws enacted by Congress are born out of compromise and are therefore usually vague and general, the responsibility and authority delegated to the executive agencies provides leeway in determining the intent of Congress. This domain of the regulation writers and enforcers has come to be described as the fourth branch of government because of the tendency for "new law" to be created when regulation writers, in the process of developing conditions and requirements for legislations, go beyond congressional intent. Congressman O'Hara described this as an assault on the right of Congress to make law (1975). Federal regulations have become so burdensome, so costly, so intrusive to the internal operations of institutions, that the Federal Government is now being viewed as "the enemy" by many educators. The president of Ohio State University in addressing this phenomenon observed, "once we were partners working together to solve national problems. Now we view each other with suspicion, almost as adversaries" (Enarson 1975, p. 1).

In 1952, the Commission on Financing Higher Education predicted that dependence on federal financing would bring federal con-

trol, which ultimately would produce compliance, uniformity, and mediocrity. Some higher education leaders believe the reality of that prediction is clear and that the scope and direction of federal influence threatens the independence, flexibility, and diversity that historically has set apart American higher education. In an address before the Association of Governing Boards of Universities and Colleges in September 1976, the president of Brigham Young University proclaimed that the increase in federal financing and control had reached a point where education's relationship to the Federal Government "can now be characterized by such discouraging metaphors as a dependent colony, a regulated industry, or a business whose potential peril has brought it to the brink of receivership managed by an absentee creditor in Washington" (Oaks, September 18, 1976, p. 1).

Of course, the federal regulatory bureaucracy has not singled out higher education. As the legislative and executive branches of government have responded to the multitude of interest groups within our pluralistic society, demands for "accountability" in performance and shepherding of tax funds have come from civil libertarians, consumer protectionists, environmentalists, unionists, industrialists, liberals, and conservatives. American society has forced on its government such a spectrum of demands and edicts that reams and reams of regulations, specifications, procedures, and audits stream from Washington by the hour.

While many of the infringements of federal regulations upon higher education have been invited or perpetrated either by the action or inaction of institutions of higher education themselves, the fact remains that the Federal Government has moved from a junior-partner role toward an increasingly regulating, controlling, and dictating one. There are a variety of reasons why higher education must not be treated as a business or industry in this regard. It is appropriate that we first review the context of the problem that exists.

Summary

Federal regulation has descended upon every facet of life in America today and has come to reperent a major portion of the hours and energy of America's manpower at the federal, state, and local levels. The weight of regulations has slowed America's efforts to respond to its major problems such as energy, health, environment, and education.

Elementary and secondary education now operates under state departments of education that are staffed and supported as much or more by federal than by state sources. State departments of education

no longer are "state-centered" if the "who-pays-the-piper" axiom holds. School administrators and state education leaders believe the prerogatives of the state are being replaced by a national system of education.

Historically, the Federal Government exercised virtually no control over higher education. However, during the second half of the twentieth century the federal presence played a significant role in the phenomenal growth in higher education, ranging from increased numbers of institutions to enrollments that soared into the millions and campuses worth billions of dollars. As federal programs grew, so did the numbers of regulatory agencies created to administer those programs; the avalanche of regulations followed. Both public and private colleges and universities have become so alarmed by the burdensome regulations and the occasional capriciousness of the regulators that strong vocal opposition has begun to surface. Most complaints are directed not toward the goals of federal legislation and regulation but rather toward the means employed to achieve those goals. Leaders in higher education have come to recognize that more fundamental dangers to the foundation of higher education are represented by the direction and application of federal regulations over the past few years than in previous decades. These dangers will be discussed in detail after a review of the context of the problem.

Evolution of the Federal Presence

> Control by federal and state governments continues to advance like a new ice age. A realization of the seeming inevitability of this advance, rather than its sudden occurrence, will constitute the shock, if indeed the glacial spread cannot be halted (*Priorities for Action: Final Report of the Carnegie Commission on Higher Education* 1973, p. 56).

Higher education preceded our present system of government. Initially, colleges were chartered by the Crown; subsequently, during the seventeenth and eighteenth centuries, individual Colonies granted the charters for the establishment of colleges. Government deliberately and conscientiously stayed out of the internal affairs of the colleges for reasons of academic and religious freedom. In the early days of the Republic, most institutions of higher education were privately sponsored and the sectarian nature of many of them established a consciousness rooted in the First and 10th Amendments of the Constitution. While national government did play a significant role in stimulating the establishment of some public higher education institutions, the interface primarily was between the federal and the state government. The "states rights" principle was directed toward both state government and higher education, which provided political and philosophical obstacles to infringement upon institutional autonomy or self-determination. The interface of federal-state-institution was more triangular than the implied straight-line configuration. The early federal role in the development of public higher education found directive-type policies aimed primarily at the states; hence, accountability followed a direct federal-institutional interface and did not include the states until about a decade ago (Millard 1976, p. 32). Since that time, however, the federal-state-institution interface has become more linear.

Conrad and Cosand, in their excellent publication titled *The Implication of Federal Education Policy* (1976), developed four distinct chronological periods in analyzing the direction federal policy has taken. The same time periods will be used here.

Stage One: (1636-1862)

For nearly 225 years, from the Colonial period until the Morrill Act of 1862, state and private responsibilities for higher education were dominant and the federal interface with colleges and uni-

versities, where it existed at all, was with the state government. Direct federal involvement was evident only in the establishment of the military academies at West Point in 1802 and at Annapolis in 1845. The Dartmouth College case of 1819 firmly established the independence of private institutions and fostered the dual system of public and private higher education as it exists today.

The purposes of early federal involvement in higher education were only peripheral and clearly limited in scope. The problem of getting rid of land and of dispersing the population clustered in the Colonies stimulated the earliest federal land-grants for higher education in the Northwest Territory Ordinance of 1787. These initial land-grants had no strings attached, since the land could be used for the site of an institution or could be sold and the funds used as an endowment to operate an institution. Historically, even more private institutions, including Miami University of Ohio and the Vincennes University in Indiana, benefited from such grants of land. Subsequently, however, Congress specified that institutions endowed with federal grants should be state controlled; many of the state universities of today were founded to take advantage of those federal grants (Rivlin 1961, pp. 10-13).

The Morrill Act of 1862 is the most popularly known federal legislation related to higher education. It came about almost one hundred years after the Northwest Territory Ordinance. Creation of the land-grant college found the Federal Government not only giving land but using regular tax revenues for the purpose of higher education, thus triggering the constitutional "spending power" of the Federal Government for higher education. Nevertheless, even the Morrill Act was part of a broader concern with utilization of the nation's natural resources and the westward expansion rather than a specific federal concern for higher education. In fact, the early land-grant institution was not recognized as a full-fledged member of higher education, which was reflected in the attitude of some who in the early years called the young institutions "cow colleges." However, the Morrill Act did impose requirements on the states that foreshadowed the ultimate danger of federal intrusion ahead. There was direct intervention of the Federal Government into the autonomy of the states, and they, like most institutions today, found it expedient to accept federal dollars and compromise on governance principles. A grant of 30,000 acres for every Senator and Congressman was made to each state, with the provision that each state assume all expenses associated with the sale of land as well as the costs of management and disbursement of funds. By federal edict, the entire federal con-

tribution was to be reserved as an endowment; a further federal requirement provided that the endowment monies be invested in federal bonds or other "safe securities" as permanent funds for the support and endowment of appropriate colleges (Rainsford 1972, pp. 252-253). The precedent of federal mandates to individual institutions also occurred with this Act, since the land-grant college was obligated to submit an annual report to the Secretary of the Interior. This was a perfunctory matter and was essentially directed toward assuring accountability by the state when using federal funds for a specific purpose.

Stage Two: (1862-1945)

Early federal policy, which continued with the Second Morrill Act of 1890, demonstrated a visionary and anticipative concern for future national needs. There appeared to be a readiness on the part of Congress "to overrule state provincial concern in favor of the broader national interests" (Blocker et al. 1975, p. 136).

The Second Morrill Act of 1890 provided money for instruction in "agriculture, the mechanical arts, the English language, and the various branches of mathematical, physical, natural and economic science, with special reference to their application in the industries of life" (Rivlin 1961, p. 20). Thus, in addition to mandated reporting requirements, the public land-grant institutions were required to offer certain instructional curriculums before they could qualify for federal money. Even the reporting requirements became more complex and comprehensive, since the land-grant college presidents, by edict, were obligated to submit detailed annual reports encompassing students, faculty, library, receipts and expenditures, and all "such other industrial and economics statistics as may be regarded as essential" to both the Secretary of the Interior and the Secretary of the Treasury. Furthermore, Congress established the precedent of using sanctions to force compliance; the Secretary of the Interior was authorized to deny payments if the conditions of the Act or annual reporting were not carried out by any state. Thus, for the first time the Federal Government established control over how funds would be used (Rainsford 1972, p. 111). However, the action was more directed at the state than at the institution, and administrative control clearly remained in local hands.

The "incentive" approach of federal funding was employed in subsequent Acts designed to encourage special types of education within the states. The Hatch Act (1887) was directed toward agricultural research in state colleges of agriculture and mechanical arts; the

Smith-Level Act was directed toward university extension; and the Smith-Hughes Act of 1917 was directed toward vocational education. The first clear evidence of lobbying from educators was in evidence in each of these Acts. Since the funds for the land-grant colleges were granted to the states, it is not surprising that these colleges, almost from inception, lobbied for additional federal support.

The National Society for the Promotion of Industrial Education, the forerunner of the American Vocational Association, is given credit for influencing the writing of and subsequent passage of the Smith-Hughes Act of 1917, which influenced the development of vocational education throughout the nation. Parenthetically, the separate administrative structure from federal to state to institutional level provided in the Smith-Hughes Act came as a conscious effort by the vocational education lobby (Venn 1964).

Although the federal-state-institution interface continued to show a federal commitment toward "states rights" principles during the second stage of development, the state was excluded from the triad in the area of research contracts. Federal support for research was directed primarly at agriculture until the First World War, when some defense-related research monies were provided to individual universities. During the Depression in the 1930s, some of the Works Progress Administration (WPA) funds were used to support individual research projects by faculty members in the public colleges and universities. Whether during the crisis of war or depression, federal research contracts were directly between the Federal Government and the institution, with little administrative dislocation imposed on the institution to comply with reporting requirements.

In retrospect, the impact of the federal presence during the early years could be described as the impetus for the development of the public sector of higher education that for 150 years was to be far less significant in size and prestige than the private sector. Some in higher education still hold the Federal Government responsible for the emergence of the public sector as the larger partner of the public-private complex of higher education in this country. The federal shift from institution-centered to student-centered funding during the past five years has been viewed as a federal reaffirmation of the imperative role of the private sector, which thus has contributed to the maintenance if not survival of many private colleges and universities.

Stage Three: (1945-1970)

By 1945 the Department of Agriculture administered approximately

$15 million for research in colleges and universities. Ten years later, over $150 million was being expended for contract research over a dozen federal agencies. The Federal Government in its interface with higher education continued to honor the tradition and value of avoiding federal intrusion in matters of institutional self-determination. Accountability obligations were primarily those required of the respective states for federal funds flowing to land-grant colleges and universities as well as to vocational education. Much of the private sector of higher education was totally immune from any federal involvement until legislation enacted in the mid 1960s. Those institutions that entered into contractual relationships for research were able to accommodate accountability obligations primarily through a project-by-project accounting and reporting procedure. The costs of such reporting were usually written into the contract, and little or no internal impingement was felt in any other operation of a given institution.

The Servicemens' Readjustment Act of 1944, popularly known as the GI bill of rights, has been described by many as the precursor of permanent federal support for and involvement in higher education. The GI bill triggered the enrollment explosion that caused a jump from 400,000 students in 1946 to 1,500,000 in the fall of the next year, thus signaling a boom period for both public and private institutions (Rivlin 1961, p. 68). However, some of the excesses and mismanagement associated with this program spawned many of the punitive mechanisms and regulations impinging upon institutions today.

The GI bill was another example of federal legislation enacted more in response to crisis than to national policy; it also had landmark implications for the direction of higher education. Congress did not enact the GI bill as a means to strengthen or enhance higher education; it was attempting to deal with the problem of absorbing millions of returning veterans into an economy that had become shunted away from a domestic-consumer market to a munitions-defense market. Colleges and universities represented a resource that gave Congress an opportunity to repay those who fought for their country and at the same time to take pressure off the labor market. The ultimate consequence was a press toward egalitarian principles that many in society now expect of American higher education. The GI bill also set the precedent for the benefits extended to the Korean War veterans under Public Law 550 in 1952.

The Federal Government, in attempting to address the federal-state-institution interface, sought to avoid any direct intrusion into

the self-determination of institutions when designing the Servicemens' Readjustment Act of 1944. Benefits were paid to the veterans, and accountability was essentially administered through a government-veteran relationship. Unfortunately, some institutional dishonesty and administrative abuses — for example, where tuitions were raised merely to profit from the veterans' program — prompted Congress to seek a different strategy for funding when extending the Korean veterans' benefits in 1952 (Honey and Hartle 1975, p. 16).

Congress, in an attempt to address the abuses of the World War II GI bill program, struggled with the issue of how to determine reputable and reliable institutions without assigning powers that could ultimately lead to a *de facto* ministry of education. When writing the Veterans' Readjustment Assistance Act of 1952, Congress employed a strategy of using a nongovernmental intermediary between the federal-institution interface. This was accomplished by requiring the U.S. Commissioner of Education to publish a list of nationally recognized accrediting associations; in turn, those institutions listed as accredited by such associations would be eligible to serve recipients of federal funds. This strategy was expected to satisfy the need for determining quality programs while avoiding direct federal evaluation of educational institutions. The same Act required states to designate an agency to determine eligibility; in the absence of state action, the Veterans' Administration was authorized to function within a state. Reliance upon accrediting associations by the U.S. Office of Education was seen "as a quality control device . . . and, even more importantly, as a means of aiding students and others in identifying institutions and programs deemed to be educationally worthy" (Muirhead 1974, p. 36).

It should be acknowledged that Congress reluctantly became involved in more direct funding of colleges and universities, which, with their respective national organizations, lobbied diligently during the development of the Korean War Veterans' Act of 1952 by urging the Federal Government to provide monies for facilities construction. The argument advanced was that the Federal Government was exploiting the institutions by subsidizing the veterans but not providing any funds to accommodate the expanded capital and operating requirements of public and private institutions. State legislators argued that state tax funds were being used to construct facilities to accommodate a federal "give-away" to veterans; boards of trustees of independent institutions argued that their endowments were being dangerously strained to accommodate the expansion of facilities and the increase of faculty. Many in the public sector pre-

dicted capital overextension was a real danger that could well result in the subsequent demise of the private sector if some relief were not forthcoming. However, Congress was reluctant to become involved, either for philosophical or economic reasons or both. Proposed legislation designed to provide loans for capital construction for higher education was introduced and defeated by Congress in both 1956 and 1957, just before the Russians launched Sputnik.

The urgency of the perceived threat to national welfare generated by Sputnik, as well as the general emotional climate, provided higher education lobbyists with an opportunity to press for congressional action. With the passage of the National Defense Education Act of 1958 there was a shift away from the "states rights" view of some in Congress. For example, Senator Goldwater in 1958 argued, "if adopted, the legislation will mark the inception of aid, supervision and ultimately control of education in this country by federal authority" (*Senate Miscellaneous Reports on Public Bills*, Vol. 2, as quoted in Honey and Hartle 1975, p. 20).

The National Defense Education Act of 1958 (NDEA) was viewed as an emergency defense measure not directed toward higher education per se. The emphasis of NDEA was on elementary and secondary education and was designed to improve counseling programs, science, mathematics, foreign languages, and reading disciplines as well as support audiovisual aids. The gravitational pull of federal funding can be seen in the response of many policy-makers and administrators of the school-district-rooted public community junior colleges at that time. They sought to enjoy the best of two worlds by showing willingness to sign appropriate letters of declaration, which confirmed they were components of school districts, and thus qualified institutions for NDEA funds directed toward the secondary schools, while at the same time many of the same institutions were working vigorously to be viewed as full-fledged members of the "higher education community" in their respective states, by urging the then American Association of Junior Colleges to champion national recognition of two-year colleges as acceptable components of higher education (Bender 1975, pp. 10-11).

While focus was primarily on elementary and secondary education, the NDEA did encompass higher education as well. Title II authorized the U.S. Commissioner of Education to provide funds for college and university student loan programs to attract superior students preparing for such fields as teaching, science, mathematics, engineering, and foreign languages; Title IV provided some graduate fellowships for those preparing for college teaching. However, NDEA was

to be the last federal legislation where it was argued the Federal Government should be involved only tangentially in supporting both public and private sectors of higher education. In general, it was the beginning of a new federal trend to deal with the issue of student access and to become involved in upgrading institutions as a permanent federal obligation to higher education, which had come to be preceived as a national resource (Honey and Hartle 1975).

The NDEA also fostered a variety of state-level offices or units charged with reviewing, approving, monitoring, and subsequently auditing the programs, utilization, and funding of the federally-initiated programs. As a result of that Act, many of the offices or units established in departments of education in various states still exist as living testimony to that early precursor of state-level control (although not all states were organized in such a way that higher education institutions came under the purview of these state departments of education). Federal stimulation of state agencies directly responsible for higher education occurred in the 1960s.

The Higher Education Facilities Act of 1963 stipulated some provisions to be administered through the states, while others were to be administered directly through the federal-institution interface. The concept of matching funds was introduced as a further extension of the enticement or incentive approach. The same legislation represented substantive intervention toward the states, which were mandated to assume responsibility for administering several federal programs and for developing a state plan. Since federal funds were made available to underwrite employment of personnel involved in administering the Higher Education Facilities Act and to develop the state plans, few objections were voiced from the states. "It is no accident that the major period of acceleration in the development of state higher education agencies and boards coincided with the most rapid period of expansion of higher education in the history of this country — 1960-1970" (Millard 1976, p. 10).

When Congress approved the Higher Education Act of 1965, further evidence of the emerging shift from junior partner to senior partner over the states was revealed. That legislation reaffirmed the direct federal-institution relationship, but the substantive intervention posture of the Federal Government toward the states was reinforced. Title I authorized matching funds to the states for community service programs conducted by public or private colleges and universities; however, states were required to develop comprehensive statewide community service programs that had to be approved by the U.S. Commissioner of Education before funds would be provided. Further

more, the federal legislation specified that emphasis would need to be directed toward urban problems, including housing, poverty, employment, health, transportation, and related issues. Review of the other Titles demonstrates the scope and depth of federal involvement at the institutional level: Title II, College Library Assistance; Title III, Strengthening the Developing Institutions; Title IV, Student Assistance; Title V, Teacher Programs; Title VI, Improving Undergraduate Courses; and Title VII, Amending and Extending the Facilities Act of 1963. These Titles will be discussed in more detail under the Education Amendments of 1972 in the next chapter.

There is a danger in such a brief review of federal education legislation, since it implies a single-dimension involvement between the Federal Government and higher education. This is far from the truth. It is appropriate to recall that social unrest and demands for civil liberties and egalitarian principles were among the highest priorities during the 1960s. Social legislation addressing the problems of poverty, urban blight, civil liberties, and socioeconomic mobility for a pluralistic society created new external pressures on Congress as well as on higher education.

As the courts became more active in these areas, the range of litigated issues that directly involved colleges and universities brought a maze of noneducational agencies into play with the day-to-day operations of institutions. Courts entertained cases related to a broad range of institutional/student/employee/public relations activities, including student discipline, dormitory searches, recognition and status of student groups, access to campus facilities by all public groups, admissions, confidentiality of administrative and policy-making meetings, faculty and employee retention, and other aspects of employment practices. The *Brown versus Board of Education of Topeka* case in 1954, which made school desegregation mandatory, and the subsequent Supreme Court Decision of 1956, which ruled against educational segregation by race, changed the nature and modus operandi of entire systems of schools, colleges, and universities. The range of litigation, from the local to the federal level, encompassed issues dealing with participation in university or college decision-making, the legal status of public and private colleges, and equality in the allocation of benefits and opportunities. Not only were the courts being used in issues against higher education, but institutions turned to the courts to protect their own interests as well (O'Neill 1972).

Finally, it should be recognized that the concern of the relationship of government to education was also intense during the 1960s. In an effort to strengthen the state-level policy for and direction of edu-

cation, James C. Conant proposed an interstate compact that would bring state-level decision-makers and governmental policy-makers together. Due in part to Conant's efforts, the Education Commission of the States (ECS) came into existence in 1966. The goals of ECS included "strengthening education in the states, and making sure that the states' points of view received reasonable consideration on the national level" (Millard 1976, p. 32). A Department of Higher Education Services was created within ECS and, according to Millard, its task forces on various issues examined every issue not only on the basis of state-institution perspectives but with a view to determining desired federal direction as well.

As higher education came to be perceived as a national resource, the relationship of colleges and universities to state and federal government changed. The possible accuracy of the predictions of the state's rights advocates became more prominent and clear only during the past five years.

Summary

The roots of higher education were planted in a soil rich in societal acceptance of the principle that colleges and universities are, in fact, different from other societal organizations with perhaps the single exception of the church. The evidence suggests the Federal Government honored that separate condition and the right of self-determination for over 150 years. Even when it established policy that provided funds to higher education, the spirit of political and academic freedom guided the federal-institution relationship. For the early land-grant colleges, accountability primarily was directed to an annual report that explained use of the federal funds and to guarantees that the desired programs in the practical and applied disciplines were being offered. When research became a national priority, direct contracts with institutions for a specific service enabled institutions to maintain their economy and self-determination. Furthermore, government was concerned with the broader problems of an emerging industrial society and generally was not consciously perceiving higher education as a tool of public policy. Inadvertently, federal policy did spawn the beginnings of the public sector of higher education and set the stage for it to emerge as such a large enterprise that it became a threat to the very existence of the private sector. In addition, by becoming more assertive toward the states and by requiring state plans, as well as directly strengthening state departments of education, the Federal Government fostered a more direct federal-state-institution interface and contributed to the stronger

central role played by the state and Federal Government over higher education.

The Contemporary Scene: Since 1970

> If educators were ever under the illusion that federal control would not follow the federal dole, they have certainly been disabused of that notion. And while some would agree that the effect of the federal role in post-secondary education has nevertheless been positive, one encounters an unmistakable and increasing anxiety when educators confront projections of present trends into the next decade (Andringa 1976, p. 26).

This chapter concerns various federal programs and agencies that affect the operation of colleges and universities during this, the fourth developmental stage. It resumes the discussion where the previous chapter ended by considering various Titles under the Education Amendments of 1972 as well as other federal legislation directed toward social programs that directly or indirectly impinge on higher education institutions. These federal programs are organized according to the administrative or programmatic area of the institution affected. To show the impact upon institutions, some illustrations and explanations of impingement will be given; these are discussed in more detail in the following chapter.

Discrimination and Affirmative Action

Regulations concerning discrimination and affirmative action at first focused primarily on employment practices; they now have been expanded, particularly through the Education Amendments of 1972, to encompass financial aid, student admission, housing, academic programs, and athletic programs. Federal programs for which discrimination and affirmative action regulations exist include: the Civil Rights Act of 1964 as amended; the Age Discrimination and Employment Act of 1967 as amended; the Equal Pay Act of 1963 as amended; the Title IX Regulations Implementing the Education Amendments of 1972; Executive Order 11246, issued in 1965 as amended by Executive Order 11375 to include Discrimination on the Basis of Sex, 1967; and the Rehabilitation Act of 1973 as amended.

These various Acts illustrate the labyrinth of regulatory directions and procedures emanating from Washington; it also provides some idea of the magnitude of paperwork imposed upon institutions to prove compliance in view of the apparent federal perception that the burden of proof rests with the institution.

Civil Rights Act — The historic Civil Rights Act of 1964 is viewed as landmark social legislation; nowhere in the literature was there ob-

jection voiced about its goals and objectives. Sections 1981-85 and 2,000 d and e of the Act are the most frequently encountered by colleges and universities. They provide the basis for most reporting and are also the vehicles for grievance investigations and compliance enforcement sanctions. They state that any organizations contracting with the Federal Government may not discriminate on the basis of race or religion. They also provide a mechanism for claimants to file charges of discrimination and sanctions where discrimination is proven. Congress wrote this Act broadly, so that considerable latitude existed and was employed in the formulation of regulations and procedures.

In cases of violations of the law the courts have demonstrated that corrective action can be applied individually or on a class basis. They have ruled that remedies may include assessment for back pay, payment of legal costs, assurance of the abatement of discriminatory practices, and implementation of specific corrective action.

Colleges and universities found that the heaviest workload under the discrimination and affirmative action laws emanates from the Civil Rights Act. Three distinct types of institutional criticism are directed toward the Act. First, institutions contend that Congress created a nightmare of overlapping jurisdictions by assigning responsibility for different Titles to different federal agencies. Second, agencies have written their own regulations without regard to counterpart agencies and have assumed strong jurisdictional prerogatives in enforcing their own requirements. The third institutional criticism has centered upon the costs of multiple reporting and legal counsel as well as the ambiguous role of enforcement agencies in regulation interpretation and requirements.

A majority of colleges and universities have become involved in some aspects of civil rights regulation enforcement. Many have had charges of discrimination submitted to regulatory agencies by individuals or groups within the institution. Whenever a charge is filed by a claimant, the agency is obligated to carry out an investigation and most have resorted to massive paperwork approaches rather than direct, decisive investigation. The regulations and procedures have become so burdensome and complicated that many question whether the means and procedures have not become more important to some federal agencies than the original objectives and goals of the social legislation itself. Millions of dollars have been spent on reporting and justifying that could better be used to provide training stipends or incentives to attract members of the affected class to the institutional work force (Bok 1974, p. 2).

Age Discrimination — The Age Discrimination in Employment Act of 1967 as amended prohibits any discrimination on the basis of age whether in hiring, job retention, compensation, or employee benefits. The Wage and Hour Division of the Department of Labor has jurisdiction over this program, and while relatively little extra paperwork is obligatory, guidelines to higher education institutions do require that institutions develop policies and plans covering retirement provisions for all employees. Complaints can be addressed to the area or regional offices of the Wage and Hour Division, which automatically triggers investigations.

Equal Pay — The Equal Pay Act of 1963 as amended in 1972 is also administered by the Wage and Hour Division of the Department of Labor. Two areas of institutional operation often become involved under this federal program. One is in relation to the pay scales for custodians, maintenance employees, and housekeepers while the other is in relation to challenges for equal pay between part-time and full-time employees. The most publicized dimension of this Act has dealt with charges of women employees, particularly faculty, that their rights had been violated by institutions that paid less to women over the years than to men for comparable duties.

While participating in a conference concerned with government regulation and academic freedom, the president of Columbia University described a case that had developed in his institution. Columbia's labor contract was challenged by a group of university maid employees because of the distinction between janitors and maids provided in the contract. The university was charged with various offenses and violations of the Equal Pay Act, and two successive Secretaries of Labor joined the maids in their action against the institution.

Ultimately, the university won the case in court but incurred over $50,000 in legal costs. The president observed that the principal outcome was a modification of their labor contract to provide for "light cleaners" and "heavy cleaners," regardless of sex (McGill 1976, p. 14).

Other Provisions — The Title IX regulations as well as Executive Orders 11246 and 11375 are notable because of their focus upon remediating problems of inequity and discrimination. Whereas the discrimination legislation previously described generally addresses compliance and redress aspects, these provisions actually commit the institutions to affirmative efforts for overcoming historic inequities. Regulations issued for affirmative action under the Executive Orders are promulgated by the Office of Federal Contract Compliance of the

Department of Labor, but the enforcement agency for higher education is OCR.

Colleges and universities and federal agencies have not always agreed on what affirmative action really means or on the strategies to be employed in achieving such a goal. The tug-of-war has taken place as agency officials lean toward an institutional commitment of affirmative action that would set specific quotas or goals in numbers of employees for the affected classes. Institutions respond that it is inappropriate to establish quotas and other devices that inadvertently create reverse discrimination or force the institution to employ less qualified candidates merely to satisfy quota requirements. Agency officials believe institutions should imaginatively recruit, while institutions insist the workforce does not presently contain enough qualified individuals in the affected classes. Institutions see the solution of the problem as long-term, while some agencies insist short-term solutions should be achieved.

A second layer of state-level agencies and regulations — commonly known as state Fair Employment Practices Commissions — are found in the employment discrimination categories that also affect colleges and universities. A considerable amount of regulatory overlap results because of the many agencies involved and because of the absence of any coordinating mechanism between levels. Another problem is encountered when one agency accepts institutional provisions as being in compliance, while another agency finds the same provisions not in compliance with its regulations. A document on affirmative action dealing with the handicapped from the Department of Labor states, "this program is not interchangeable with any other minority affirmative action programs. This is a separate program utilizing distinctive standards, and the application is entirely different" (Martens 1976, p. vii).

The IRS has become involved in regulating and enforcing discrimination policies in response to congressional concern with private institutions that were established primarily to avoid integration. The sanction available to IRS is its power to void the tax-exempt status of any private educational institution found to discriminate in admissions policies. The paperwork load imposed upon all private institutions is apparent in the guidelines published in IRS Bulletin 1975-49 (December 8, 1975), which specify that an institution must, in order to retain its tax exempt status, develop and maintain (1) records on the racial composition of all students, faculty, and administrative staff for each academic year; (2) records that document that scholarships and other financial assistance are awarded on a

nondiscriminatory basis; (3) copies of all brochures, catalogs, and advertising dealing with admissions and scholarships that evidence a nondiscriminatory policy; and (4) copies of all materials used to solicit contributions that also show a nondiscriminatory policy. The IRS has extended its purview beyond student admissions to encompass employment of faculty and support personnel on the premise that discriminatory employment practices would be indicative of discriminatory policies affecting students.

A posture assumed by the EEOC seems contrary to the basic principles of American justice. In a handbook for employers the statement is made: If a statistical survey shows that minorities and females are not participating in your labor force at all levels in reasonable relation to their presence in the population and the work force, the burden of proof is on you to show that this is not the result of discrimination, however inadvertent (Martens 1976, p. 2).

This is testimony to the posture of some federal agencies, implying they operate from the pinnacle and institutions are subjects rather than partners in carrying out social goals.

Other Employment Practices

A number of federally-mandated social programs that are now operational in colleges and universities are obligatory but are not related to the education program. The goals are laudable and, in most cases, benefit employees of the institution. Since mandated social programs originated in the industrial and business sectors, they became applicable for colleges and universities only after institutions came to be viewed and treated as business entities. Among such federal programs are: the Fair Labor Standards Act of 1938 as amended; the Social Security Act of 1935; Employment Security Amendments of 1970; Employment Retirement Income Security Act of 1974.

Fair Labor — The Fair Labor Standards Act (FLSA) deals with minimum wage-and-hour standards that have been established by Congress and have had primary impact over the wages of plant-and-grounds and cafeteria workers as well as other support staff. The standards also apply to employment of students who serve in labor positions for an institution. There are no substantial paperwork or reporting requirements associated with this law.

Social Security — Some states have seen fit to maintain their own retirement programs for public employees and thus have not chosen to be under the Social Security Act. However, all private institutions are under the Act, as are all public institutions in those states that have accepted the federal program. The Act encompasses retirement

and disability as well as unemployment compensation. Congress sets the contribution rate as well as the income or tax base for calculating the required contribution. While the administrative costs of the program to an institution are negligible, the legislatively-imposed contributions have resulted in substantial and rising costs to colleges and universities.

Regulations associated with the social security programs are less criticized than is the impact of the cost to the institutions. An ACE study, which is probably the most definitive in dealing with the impact of federally-mandated social programs on higher education, found institutional contributions increasing as much as fourfold in the past decade (Van Alstyne and Coldren 1976). The study indicated that institutions, as "labor intensive" entities, are far more vulnerable to the rapidly escalating costs of such mandated programs than business and industrial organizations, which find it easier to pass along such costs to the consumer. More startling was the observation that the gradual shift in federal tax policy has depreciated the tax advantage of the historical tax-exempt status of colleges and universities. The social security share of federal budget resources has increased from about 15 percent to 31 percent because of the mandated increase in employer contributions, while the corporate income share has dropped from about 22 percent to 11 percent (Van Alstyne and Coldren, June 1976, p. 19). This is felt more directly by colleges and universities because they do not have the same economic base as a corporation.

Student Financial Aid

Among the various federal programs concerned with student financial aid are: the Veterans' Readjustment Benefit Act of 1966 as amended; Social Security Benefits, Extension to Students Attending School after Reaching 18 and up to Age 22; the Basic Educational Opportunity Grant Program of 1972; the Supplemental Educational Opportunity Grant Program as amended in 1972; the Federally Insured State Guaranteed Loan Program; the National Direct Student Loan Program; the Federal College Work-Study Program.

The experiences of different colleges and universities with the variety of student financial aid programs have tended to fall into two major areas of concern. The most frequent criticism reported by colleges and universities relates to the paper workload required for the variety of student financial aid programs and the costs incurred to administer the programs. The complexity of guidelines and regulations, as well as the criteria for qualifying, have resulted in the

emergence of an entirely new career field of financial aid officer. Full-time professional energies are needed to become expert in building bridges between the institution and various federal agencies. The same kind of professional dedication is needed to know the techniques and procedures to keep up-to-date on regulations rather than to be uninformed about program opportunities or tied up in countless hours of negotiating and communication.

Social Security Benefits — Administration of the social security benefits to qualified students under age 22 is an example of a federal program that operates on the concept of an entitlement but essentially exempts colleges and universities from administering the program. Benefits are paid directly to the parent; thus accountability responsibilities reside between the Social Security Administration and the recipient. Because institutions are not directly involved in the application or related procedures, some who might qualify for the social security benefit never learn about it. Only in cases where institutions have highly trained professional financial aid officers, who take it upon themselves to ferret out every possible source of financial assistance, would the institution promulgate a description of the program—much less take time to identify a student who is the child of a deceased, disabled, or retired parent who qualifies for the benefits.

Veterans' Benefits — The administrative workload associated with the GI bill benefits had not been as complex as the BEOG and other financial aid programs, which are described later. Even the total costs of administering the program are not completely forced upon the institution, since federal funds are paid toward institutional administrative overhead. A study at the University of Iowa revealed that while the VA reimbursement worked out to about $3 per benefit recipient, the actual administrative overhead costs to that institution were closer to $20 per recipient ("Impact of Federal Regulations on the University of Iowa" 1976, p. 9).

Recently a furor developed due to a new posture of the Veterans' Administration and subsequent regulations changes. Because a few institutions throughout the nation had been slipshod in verifying the attendance and status of veteran benefits recipients, a number of scandals developed. Since payment of the benefits is front-ended and the check is given to the veteran in good faith that the educational program of studies will be successfully followed, opportunities for abuse exists. The Veterans' Administration attempted to impose a requirement on approved institutions to establish class attendance-taking policies and grading policies that would inform the VA of

unsatisfactory progress of benefit recipients. Furthermore, a sanction was added whereby an institution would become legally responsible for any funds paid to a veteran who did not qualify by attendance and satisfactory work. A further sanction available to the VA was its power to approve or disapprove an institution for veterans' programs.

A number of colleges complained that the Veterans' Administration attempted to interfere with educational policies and administrative procedures and reported some VA officials tried to intimidate institutional representatives by threatening to void the institutional approval and then release such information to the media. Such publicity could easily be mistakenly perceived by the public as a deterioration in the quality and integrity of an institution's educational program.

Basic Educational Opportunity Grant Program — As one of the largest of the federal grant programs, BEOG is viewed as an entitlement program and based on the financial need of the student. Actually, it would not qualify as entitlement in the same sense as the social security and VA benefits, since the actual individual grant is determined first by a formula but then is dependent on the existence of an adequate appropriation to cover the total costs for all who qualify. In 1976-77 student participation exceeded government predictions and a supplemental appropriation was necessary for students to receive the amount for which they qualified. The BEOG program is the backbone of the federal shift from institution-centered to student-centered support. The philosophy of student-centered support, as envisioned by the Council on Economic Development (CED) and the Newman Task Force, was the free-marketplace concept, where, in theory, the customer would through a supply-and-demand principle provide the most business to quality institutions and would turn away from low-quality institutions. The concept also provided a means to support independent as well as public higher education.

Provisions of BEOG provide that qualified students may receive up to one-half of their tuition and fee cost with grants ranging from $50 to a maximum of $1,400, which are based on the student's ability to pay. Since the tuition of public institutions typically is much lower than that of private institutions, a greater dollar benefit accrues to the private institutions. Lobbyists for the publics sought to remove the one-half tuition ceiling when Congress was drafting the 1976 Amendments. Since distribution of the BEOG funds is made from a fixed appropriation, this would have resulted in far fewer recipients *en toto*, and thus would have had a substantial impact

upon enrollment at private institutions. The struggle that ensued gained more attention than any serious examination of the administrative problems and costs associated with the BEOG program. Congress has repeatedly been critical of the fragmented and bickering lobbying of higher education groups, and has cautioned that an effective higher education lobby will never exist while there is lack of unity and debilitating internecine warfare among the various segments of higher education.

Most basic grants are distributed by the colleges themselves instead of being paid directly to the student, as in the case of social security and veterans' benefits. This places a considerable responsibility on institutions. Various problems have been identified. A University of Wisconsin report observed that the BEOG reporting system is cumbersome and regulations frequently are modified or changed, resulting in late notification, sometimes in June or July, well after the optimum time for notice to students and parents of their eligibility and allowance. It was also observed that a double reporting is involved, since the system is run separately from that of other federal financial assistance programs (University of Wisconsin 1976). The NACUBO federal paperwork study also observed the same problem of too short a leadtime as well as separate but duplicative data elements required for the various programs.

Supplemental Grants — Two other grant-type programs were authorized in the Education Amendments of 1972. The Supplemental Educational Opportunity Grant Program (SEOG) replaces the earlier Educational Opportunity Grant Program of 1965, and is directed toward students with exceptional financial need. The SEOG funds are distributed on a state allotment formula allocated to and administered by the college.

While the USOE must approve the system for determining "need analysis," the college determines how much money to award and to whom. SEOG is in addition to the BEOG, with a maximum stipend being $2,900. The college can develop a financial-aid assistance package by combining BEOG, SEOG, Work-Study and/or Loans. The college applies directly to Washington, although the amount of federal dollars is divided first among the states and then among all applicant institutions within a given state, taking into consideration the total need reported by all applicant colleges in the state. Private institutions generally favor the SEOG because it provides more dollars to meet the higher tuition but also permits administrative flexibility in making the awards. It is obvious, however, that considerable paperwork is involved in this program.

College Work-Study — The work-study program was originally part of the antipoverty legislation and was intended to generate jobs and stimulate the economy as much as to aid students. Recipients work part-time at the institution or at approved nonprofit organizations. Up to 80 percent of their wages are paid with federal dollars, while the rest must be provided locally.

State Student Incentive Grants — The SSIG was created in 1972 in an attempt to encourage states to provide scholarships to needy students. It provides federal funds on a matching basis to the states. The state allocation is based on a population formula and the states are given considerable freedom to determine conditions of making the awards. Some institutions have objected to conditions or limitations imposed by different states, whereby the aid is restricted to state residents enrolled within that state and denied to those who enroll outside the state. Otherwise, there is relatively little involvement or reaction from colleges and universities.

Loan Programs — The Guaranteed Loans for Colleges and Vocational School Students is a federally-insured loan program, whereby the government insures educational loans made by banks, credit unions, savings and loan, and other types of lending institutions. Another loan program, The National Direct Student Loan Program, is a continuation of the original NDEA loan program of 1958, whereby federal funds are provided to colleges which in turn lend to qualified students.

Although these are the two basic federal loan programs, testimony to the piecemeal and fragmented design of social programs emanating from the Congress can be seen in the fact that other loan programs are on the books and are administered by other agencies. Among these are Law Enforcement and Administration Agency (LEAA) loans in the criminal field, health professions loans, and nursing loans. The major problems associated with the array of federal loan programs have been the workload imposed upon institutions and the cost of administering them. In addition, considerable publicity by the media has been directed toward the default rates, and innuendos made that colleges and universities have been negligent, if not fraudulent, in permitting such problems to exist. In most cases, the responsibility does not reside with the institution but with the lending agencies; but newspapers frequently headline the story to imply that hundreds of thousands of dollars have been defaulted at such-and-such a university.

Another facet of the problem is the tendency of federal agencies to penalize all institutions for the infractions of only a few. When

some institutions have been haphazard in administering their grant and loan programs, more regulations are generated, additional procedures required, and further recordkeeping imposed upon all institutions.

A controversial issue over the system for student need analysis has developed, centering around jurisdictional and methodological concerns. Congress placed responsibility for determining what a family ought to be expected to "contribute to the colleges when enacting the loan programs of 1958. However, for the BEOG program enacted in 1972, determination of need is based on a national "family contribution schedule" published by the U.S. Office of Education. Colleges and universities had earlier depended upon two major need analysis services, the American College Testing Program and the College Scholarship Service. In an effort to eliminate the obvious confusion that resulted, a study group chaired by Frank Keppel, and known as the Keppel Task Force, was commissioned to bring about a single financial aid approach and format that could accommodate all of the various financial aid programs. The National Association of College and University Business Officers reported that the Office of Education said it was prohibited by law from using the simplified form developed by the Keppel Task Force as well as the family contributions format (1976). Therefore, the USOE continues to propose and use its own analysis schedule, which is calculated on a different set of assumptions than the remainder of the financial aid package administered at most institutions. Efforts are underway, however, to seek a legislative remedy that would facilitate carrying out the Keppel Task Force recommendations.

Institutional Aid Programs

While the emphasis of federal support for higher education has shifted from institution to student-centered support, there still remains a variety of Titles from the Higher Education Act of 1965 as amended that are directed at various operations of the institution. Some of these programs continue to be administered by agencies at the state level and are supported by federal funds, while others operate on an institution-federal agency interface.

Library Resources — Among the institutional aid programs still on the books are Title II-A, College Library Resources, which provides a basic grant of up to $5,000 to each eligible institution of higher education as well as supplemental and special purpose grants available for purchase of library materials and for some costs of library operation.

Strengthening Developing Institutions — Title III is a program designed to provide grants for college and universities that historically were struggling institutions, some because of a limited financial base and others because of being isolated. Many small colleges and practically all of the predominantly black colleges faced such problems and were viewed as endangered. In general, they were unable to attract strong support from alumni groups or philanthropic organizations. Two federal funding designs under Title III, Strengthening Developing Institutions, were created to address this problem. The first, known as the Basic Institutional Development Program (BIDP), provides one-year grants awarded competitively to applicants who propose ways to strengthen the academic program and management of their institution. The second area is known as the Advanced Institutional Development Program (AIDP), which provides multiyear awards, usually three to five years in duration, and is intended to assist an emerging institution to move toward the so-called "mainstream" of higher education. Emphasis of this program is toward comprehensive institutional development; applicants compete on the basis of their proposed long-range goals and plans for development.

Regulations and guidelines promulgated by USOE for Title III programs established specific priorities for curriculum direction and for the management of the institution. Some have been critical of the encroachment upon self-determination reflected in the priorities of USOE, and others have been critical of alleged favoritism because of the pattern of grants, where in some cases the same institution has received basic grants for five or more consecutive years.

Undergraduate Instructional Equipment — Title VI can be traced to the concern of the Federal Government for increasing facilities of higher education following Sputnik. It authorized grants for purchase of instructional equipment and some related minor remodeling to improve undergraduate instruction. The program is administered through state agencies, where allotments are awarded by a formula related to the number of students enrolled in the state and its per capita income as compared to the rest of the nation. Federal grants must be matched, in most cases, by a 50-50 sharing from participating institutions.

Construction of Academic Facilities — Title VII is also administered through state agencies, although no funds have been made available through federal appropriations since 1974. The program originally was the Higher Education Facilities Act of 1963 and provided grants for construction, renovation, and rehabilitation of

laboratories, classrooms, libraries, and other undergraduate academic facilities.

Both capital facilities programs were well received by higher education and can be credited with contributing billions of dollars in capital facilities to colleges and university campus development throughout the nation. Some critics of the Occupational Safety and Health Act (OSHA) requirements now confronting colleges and universities have called for a rejuvenation of Title VI and Title VII for the purpose of satisfying OSHA requirements.

Rights of Privacy

Legislation dealing with privacy provides another illustration of how higher education has become swept up into broader social issues. Among the Acts included in this area are: Federal Privacy Act; Fair Credit Reporting Act; Family Educational Rights and Privacy Act of 1974 (The Buckley Amendment); and Freedom of Information Act.

The response of Congress to public concern over the citizen's right to privacy originated with the advent of sophisticated information technology and the growing use of computers to gather, bank, and dispense information about individuals, which sometimes resulted in harmful misuse of personal information and at other times dispensed incorrect information about an individual. This was particularly true in the arena of credit ratings and job placement information files. The Privacy Act of 1974 not only attempted to regulate information handling practices within the federal agencies, but also called for a commission to study data banks and automated data processing systems of private as well as governmental organizations and then to report to the President and Congress the extent to which privacy safeguards should be applied in the private sector.

The objections of many in higher education to the privacy legislation has been more on the anticipated implication than on the actual laws or regulations. Modified regulations were just beginning to be promulgated as late as March of 1976, so the implications of the actual laws and regulations are not yet clear.

The early drafts or regulations associated with the Buckley amendment essentially required an institution to involve the student in a variety of ways in the development and utilization of his or her own files. If the institution has a confidentiality policy over statements provided to determine admissions, employment, or honors, then the student or other applicant would need to waive his or her right of access to these statements. This would negate the policy of con-

fidentiality or create an unwieldy and expensive process to secure applicant waivers.

The task of soliciting confidential letters of recommendation has already become complex because of the anticipated implications of federal requirements; it has also created an apprehensiveness on the part of those writing letters of recommendation about how candid and specific they can be. As letters become more vague and general, little value exists for the final selection process, according to some admissions officers and employers. The amendment also requires accessibility to educational records of students by the parent or the student who has reached the age of majority. The original amendment had to be corrected to protect the right of the institution to have "confidential working information," such as medical and psychiatric records, personal notes of faculty and administrators, and other information typically not available to any third party.

While institutions support the general tenets of the Privacy Act, most criticism has focused upon the ambiguity of the legislation and the modifications of recordkeeping policies and procedures forced upon institutions as a result of the legislation. The regulations as yet have not been thoroughly developed; thus it is premature to predict precisely how much impact will be made on institutions in this regard.

Categorical Aid Programs

The Federal Government has historically used categorical funding as a means to achieve federal goals or mediate problem areas by providing financial support for research, development, planning, and implementation. Categorical funding is made through grants or contracts on a competitive basis. For an institution to compete successfully, it must learn all of the purposes and objectives of the program as well as the priorities that have been established by the administering agency. A new career field of grantsmanship has evolved, and some institutions have been notably superior in winning contracts and grants through their knowledge of proposal design and development. As much as 70 percent of all federal research funds have been received by about 20 public and private research universities.

A variety of federal departments and agencies administer such categorical programs. By far the largest affecting higher education is the Department of Health, Education, and Welfare. Within HEW the Education Division administers the Fund for the Improvement of Postsecondary Education (FIPSE) and the National Institute of Education (NIE), which represent two of the more prominently known

categorical programs. However, in HEW there is also the Division of Health, which controls categorical programs in such areas as the Public Health Service, the Food and Drug Administration, the National Institute of Health, the Health Services Administration, and the Health Resources Administration. These programs within the Division of Health controlled approximately $2.2 billion in fiscal year 1974, while the Division of Education administered approximately $1 billion for the same year.

In addition to HEW, Congress provides categorical funding through the National Science Foundation (NSF) and the National Foundation on the Arts and Humanities, which administers the National Endowment for the Humanities and National Endowment for the Arts. All have programs that attract proposals from colleges and universities and for which guidelines and regulations are promulgated.

The problems of federal categorical funding frequently have been associated with some of the dangers to the basic mission of the institution or the integrity of some of its programs. In some instances, institutions have inadvertently created problems for themselves by seeking and receiving categorical funds that have tended to distort the purposes and mission of the institution. Several regional universities have found adverse affects on the major mission of teaching as a result of some departments becoming overly committed to research after receiving federal grants and contracts. A more frequent problem has been the impact on institutions created by the funding patterns and shifts in priorities of federal agencies. In some cases, after an institution had become involved and had committed staff and facilities to a long-range project, federal funding ceased. When funds end due to cancellation or nonrenewal, staff and facilities often become a legacy for the institution to support or terminate. "In short, institutional integrity is at the heart of the decision to seek or accept federal funds" (Stevens 1976, p. 44). It was reported at a December 1976 conference on government regulations and academic freedom that the School of Education at Harvard University saw the federal portion of its budget increase from 5 percent in the mid-fifties to a high of 62 percent by 1968. By 1975, the federal share had dropped to only 20 percent of the School of Education's funds. Furthermore, it was reported that the School of Education inadvertently shifted from a practitioner-training emphasis to a research emphasis during that time (Powell 1976).

Other problems associated with categorical research programs are illustrated by experiences of the University of Wisconsin at Madison (UWM). That institution has a policy of refusing any "classified" re-

search that would prohibit the publication or dissemination of information on the research. While this policy has been widely published and typically is part of any proposal of UWM to federal sponsoring agencies, the university has encountered the tendency of federal agencies to insist upon "classifying" research results, even though their circulars and guidelines do not specify it as a requirement. A second problem area reported by UWM relates to federal auditing of categorical grant and contract projects. For example, the Food and Drug Administration requires duplicative auditing activities and will not accept formats used by UWM with other agencies; in addition, other federal agencies reportedly have tried to insert special audit provisions in their contracts after the initial awards had been made. This ". . . leads to a bewildering variety of requirements and to grant and contract agreements which are difficult to read and interpret. It adds to our overhead and that of the government" (University of Wisconsin 1976, p. 8).

Other Federal Programs

It would be impossible to outline all of the indirect federal programs that directly impinge upon colleges and universities; but the maze of agencies and regulations involved at the federal level is compounded by counterpart enforcement offices at regional, state, and even community levels. Some of these come under the heading of consumer protection concerns, while others relate to health, safety, and protection of the environment.

The Occupational Safety and Health Act (OSHA) is directed toward uniform standards in construction, performance, and related requirements to protect an individual's health and safety. It is estimated that higher education will need to spend over $3 billion to comply with OSHA's standards alone. Ohio State University spent $885,000 over two years in anticipation of OSHA requirements and then found an additional $9.1 million would be needed in the years ahead to bring the building into compliance (Enarson, September 1976a, p. 5). The University of Iowa estimates its capital costs to meet OSHA standards to be $25 million and anticipates an equal amount will be needed in the next 20 years for additional renovations and specialized university personnel, which will be required to carry out new procedures and duties prescribed by OSHA regulations (*Impact of Federal Regulations on the University of Iowa,* 1976, p. 38).

The Environmental Protection Agency (EPA) is credited with $50,000 a year in new costs to Ohio State University to haul waste to a landfill. The University of Iowa projects the cost of waste incineration

at $64,000, and another $7,000 a year will be needed for field monitoring. The major complaint of institutions is that many OSHA regulations are unreasonable and pertain to very rare instances of health or safety hazards. The major problem confronting colleges and universities is the capital cost obligations imposed by OSHA at a time when few institutions have any significant projected capital construction needs as a result of student enrollments. In a number of cases institutions have been forced to expend operating funds to be in compliance with OSHA requirements because of the nonexistence of any capital budget for that purpose.

Summary

The array of federal laws and regulations confronting colleges and universities is bewildering. New administrative career levels have emerged simply to accommodate the requirements imposed by the federal presence. Two levels of federal action affect colleges and universities. The first is social legislation and related regulations directed at the country as a whole, and encompasses colleges and universities because they are treated as any other business or industrial organization. The second level is social legislation and regulations aimed primarily at higher education per se, or as it is part of post-secondary education.

The shift toward student-centered financial aid has contributed significantly to strengthening the private sector of higher education. At the same time distribution of federal funds is uneven and it would be inappropriate to conclude all institutions benefit equally from the array of federally-supported programs and services.

Underlying the administrative burdens of paperwork and dollar costs of compliance, an increasing hostility has developed as talented people are diverted from the major purpose of their professional calling and the mission of the institution they serve. The increasing stratification emanating from the various federal agencies and the perceived attempts to redirect the energies of institutions to serve the purposes of the federal agencies are important factors to be considered when examining the present state of affairs between the government and academe.

Different Perspectives: Government and the Academy

> When educators grumble about excessive regulation or criticize the costs of complying with federal law, their complaints must seem familiar to every businessman who has ever experienced the travails of government intervention. In many ways, the complaints are similar. But it would be unwise to dismiss the concern of higher education as inevitable or routine. There are characteristics peculiar to colleges and universities that create special problems in their dealings with public officials (Bok 1974, p. 2).

Most of the concerns with federal regulations have been related to the paperwork involved in generating reports or the costs involved in compliance, although some shouts of violations of academic freedom and institutional autonomy have been heard in the chorus of dissent. Far more basic and critical is the precedent being established for federally prescribed direction of the operations and programs of higher education institutions. This subtle but visibly evolving condition needs to be examined more critically by scholars of the U. S. Constitution.

The Issue of Authority

The nature of our constitutional system of government places limits on the functions of the Federal Government; nevertheless, some of the elements of those functions seem well on the way of being violated if not undermined. The courts have often acknowledged the state to be a government of general powers while the Federal Government is a government of limited powers. (Observers of the federal presence might conclude that the opposite is true.) Generally, governmental powers not denied to the states by the U.S. Constitution become the province of the state.

A somewhat parenthetical but interesting analogy can be drawn between the powers associated with government and those related to the public sector of higher education. Whereas state government demonstrated its direct responsibility for elementary and secondary education through prescriptive powers of governance, it historically has wrapped itself in the limited powers in its relationship to colleges and universities. When looking at the state laws and regulations dealing with higher education, colleges and universities have had general powers of determination over any matters not specifically covered by state law (contrary to the limited powers of school districts). Whereas

school districts read state law to see what is prescribed, and in most states cannot deviate from what is prescribed, colleges and universities may have power and authority over matters not covered by state law or regulation.

Students of the U.S. Constitution have described the kinds of powers bequeathed to the federal and state government. States were given broad regulatory or "police powers" over all activities within their jurisdiction that affect the public health, safety, or general welfare of its citizenry. Historically, education has been encompassed within the state's police powers by political tradition and legal principle. In the main, states historically utilized these powers most extensively in regulating elementary and secondary education. This modus operandi relates to the principle of separation of church and state and the tradition of academic freedom mentioned earlier. "Individual states have built their relationships on the most sophisticated legislative procedure in democratic government — the self-denying ordinance — by which states created and funded colleges but had only limited powers of review and control" (Cheit 1975, p. 60).

If the Federal Government is a government of limited powers, then how does it justify its role in the realm of education? The primary authority stems from the legal presumption that the general welfare clause — ". . . to lay and collect Taxes, Duties, Imports, and Excises, to pay the Debts and provide for the common Defense and general welfare of the United States" (Article I Cl. 1) — gives the Federal Government power to expend funds for the support of education (Alexander and Solomon 1972, p. 21). Congress's power to tax and spend for the general welfare is the basis of virtually all federal aid-to-education programs and is known as the "spending power." However, the Federal Government does not derive authority to regulate higher education under that power. Instead, Congress exerts leverage over recipients by establishing purposes for expenditure of funds and conditions for receiving such funds. Therefore, institutions of higher education could avoid many federal regulatory requirements simply by not accepting the funds. This possible course of action has recently been seriously considered by a number of private institutions.

A second constitutional power has recently been employed by the Federal Government to regulate, which cannot be easily avoided: it is the "commerce power" delegated to the federal level and covering all interstate commerce. Federal use of the commerce power has been primarily restricted to policies dealing with employment of personnel rather than educational programs. Authority of the Federal

Government has now been established to regulate labor and management relations through the National Labor Relations Board in private institutions of higher education (for example, *Cornell University* 183 NLRB No. 41, 74 LRRM 1269 (1970)). A second employment domain of federal regulation is in the wage-and-hour standards that apply to employment in public and private institutions (*Maryland versus Wirtz* 392 U. S. 183 (1968)). Proprietary schools have been under the commerce power for many years because their profit motive treats education as a commodity. They, unlike the nonprofit sector, are under the jurisdiction of the Federal Trade Commission. The profit motive and the interstate nature of the educational enterprise of proprietary schools have been used to defend the "commerce powers" in various situations (*Marjorie Webster Junior College versus Middle States Association,* 432 F. 2d. 650, 655 (dc cir. 1970)). Kaplan warns:

> Potential commerce clause limitations on state police powers will become increasingly pertinent as postsecondary education institutions and programs increasingly operate on a national or regional, rather than purely local, basis, and as innovations in postsecondary education increasingly make use of interstate mails in communications media, computer hook-ups, branch campuses or counselling centers, transient instructors or students, and other interstate delivery techniques (Kaplan 1975, p. 14).

There is yet another dimension of authority emanating from the U.S. Constitution. Kingman Brewster, Jr., president of Yale University, describes it as the force of values that in essence affirms that no matter how worthy the end, it does not justify unworthy means (1975). Coercive use of the spending power by the Federal Government is not a proper means; yet recent examples illustrate such practices have taken place. Receipt of federal funds for a specific purpose should not subject an institution to regulation and surveillance over all its activities, with the threat that violation in one area will result in forfeiture of all federal funds. Such coercion violates basic values inherent in the U.S. Constitution. In an earlier form of the Buckley amendment, an institution could lose its federal support for all contracts and grants as well as student financial assistance simply over policies related to student records and information use. Similar congressional and regulatory approaches were utilized in the initial version of the health manpower legislation, which would have obligated medical schools to require medical students to intern in underserved regions. Brewster (1975) concluded:

> High on the agenda of the profession, especially its scholarly branch, should be to see to it that in terms of both limits on authority and redress against its abuse, the coercive power of the federal purse is made subject to a rule of law. It is high time that we learn once again to ask not only 'is your objective worthy', but also, 'are the means you would use consistent with the values of the Constitution?' (p.S3517).

The Issue of Accreditation

A peculiar structural relationship has been established by Congress connecting the USOE with nongovernmental voluntary accrediting agencies and most institutions eligible for federal funds. Prior to the Veterans' Readjustment Assistance Act of 1952, the USOE was primarily a data and information clearinghouse. As a safeguard against the abuses and excesses of the GI bill of 1944, Congress sought to establish an eligibility process that would guarantee eligible institutions met certain standards of quality and legitimacy. Congress perceived the voluntary accrediting associations as providing a reliable and inexpensive approach for assuring institutional quality and thus inserted a provision in the Veterans' Readjustment Act of 1952 that required the U.S. Commissioner of Education to publish a list of recognized accrediting agencies that would serve that purpose. Any institution accredited by agencies on the commissioner's list would be eligible under the Act. The basic concepts of that provision have been utilized by Congress in all subsequent major Acts of financial aid to higher education. Thus, an unusual interdependency has developed between the Federal Government and nongovernmental agencies, which has been described as "one of the most tenuous, delicate, and complex in the curious web of authority we call Federalism" (Bell 1974, p. 1). In 1957, Congress required the U.S. Commissioner to develop regulations dealing with accrediting agencies. This gradually intensified federal oversight of the accrediting agencies, leading former U.S. Commissioner Peter Muirhead to observe:

> One of the pressing problems right now is just how far this oversight can and should go in order to achieve realistic assurance that both the students' education rights and the taxpayers' dollars are protected while, at the same time, avoiding unwarranted federal intrusion into the educational process (Muirhead 1974, p. 133).

The dilemma has evolved as the USOE has come under increasing pressure to assure equal access, quality of opportunity, consumer protection, as well as accountability of federal funds. Accrediting associations do not view themselves as regulatory or policing bodies, yet they have become perceived as *de facto* responsible agencies for

these purposes. A regional supervisory auditor of the U.S. General Accounting Office was carrying out field investigations into this area as late as October 1976, even though official statements of accrediting associations had disavowed that they served any monitoring or policing function. In explaining the field audit of random colleges and universities in the southeastern region, the official wrote:

> . . . because the OE placed heavy emphasis on accreditation in determining an institutions' eligibility, we are examining (1) the policies for procedures and practices used by accrediting agencies in their accreditation activities; (2) the reliance placed on accreditation and the accrediting associations by OE for eligibility determination and program regulation, monitoring and enforcement; and (3) if the government's expectations in relying on acreditation are being met (letter dated October 21, 1976).

At issue is the extent to which the Federal Government is expecting functions from accrediting agencies that are not consistent with the mission and purpose of accreditation. In testimony before a House Special Subcommittee on Education, Frank Dickey (1975) concluded:

> I suppose one of the major reasons that I have insisted that eligibility and accreditation should be separated is the growing feeling among the institutions of higher education and the accrediting agencies themselves that the eligibility factor is presenting an amount of control over the accrediting agencies by the Office of Education and other federal offices that will soon eventuate in the erosion of the independence and autonomy of the accrediting agencies (p. 96).

Kirkwood before the same Committee observed, "A more recent danger to emerge is that of attempting to coopt the accrediting agencies as enforcement arms of the Federal Government, a development which could divert them from their primary function of promoting the improvement of education to one of intrusive police action" (Kirkwood 1974, p. 105).

Use of accreditation as a linchpin is seen as necessary to avoid direct federal control; yet the emerging demands for policing would undermine if not destroy the very purposes of voluntary accreditation. Regulations are now imposing a threat to another element distinctive to American higher education.

The Legislative Issue

A major obstacle of remedying the problems of federal regulation while retaining the benefits of federal funding resides with Congress. Typically, the executive agencies receive the brunt of criticism and some naively believe regulatory problems could be solved simply

by consolidating responsibilities and utilizing benevolent, perceptive federal officials. However, the problem is far more intricate and complex, and begins with the legislative process. The organization and procedures of Congress itself contribute to the problem of overregulation and mitigate against any rapid or simple solution. Congress is organized to spread out the responsibility for the thousands of bills to be considered. It carries out its work through committees that theoretically enable participatory input from the body politic. This committee system also permits a limited number of legislators to deal with many significant problems in a thoroughgoing manner as well as permitting them to deal with more pieces of legislation than could be considered by the Congress as a whole. As a result, there is no single coordinated avenue for all federal policies affecting higher education now operant within Congress.

The Committee on Education and Labor in the U.S. House had jurisdiction over 114 federal programs pertaining to higher education in 1976; however, the Library of Congress identified 439 separate statutory authorities affecting higher education. In 1973, the National Commission on the Financing of Postsecondary Education identified more than 35 agencies, in addition to the USOE, responsible for some 375 statutory programs for higher education (Andringa 1976a, p. 26).

Compounding the problem of consolidation is the political reality that committees of Congress vie for power; thus it is unlikely that many would surrender their jurisdiction over any areas, even those peripherally dealing with higher education. Should the U.S. House place jurisdiction of all 439 programs with the Committee on Education and Labor, it would be giving more power to that group, and thus impinge on the relative power of other committees and their members.

A related dimension is the existence of legislative staffs who serve the various committees, carry out appropriate studies, and draft background papers and legislative bills. These individuals establish considerable influence with members of their committees and also could be expected to resist any reassignment of programs that would jeopardize their own situation.

In addition to the committee structure, procedure for maintaining legislative authority also complicates the matter. Among the legislative programs affecting higher education directly, many have been on the books only since the 1960s. Some of these exist under authority that has a deadline of a few years. In theory, such a duration enables Congress to delete programs no longer needed; but in reality, most are renewed as the termination date approaches and usually Congress

adds new amendments that generate new regulations, while keeping the old regulations on the books. As Andringa (1976a) observes, this phenomenon is often aided by higher education lobbyists who actively support the creation of new programs but just as actively resist abolition of old programs.

Higher education lobbyists have used the diffused structure of Congress to garner desired legislation without regard to the potential adverse effect it might have on other institutions or on other parts of an institution itself. If they are rebuffed by one committee, they have alternative routes available through other committees who may have a slightly different jurisdiction but are able to address the desired action, usually without knowing of the refusal by the first committee.

The Issue of Regulation Writing

While the legislation enacted by Congress usually is formulated in the comparatively open sunshine of committee hearings by Congressmen, who ultimately must be accountable to their constituents, regulations are developed differently. In a less than sanguine portrayal of procedures of regulations development, Saunders (1976) observed, "regulations are drafted in the dreary recesses of obscure downtown buildings by unknown officials whose names rarely can be found on their agency's organization chart (assuming an organization chart can be found)" (p. 92).

While Congressional staff are relatively accessible to confer on proposed legislation, agency officials typically are reluctant to discuss components of planned or pending written regulations until an official agency position has been established. This is understandable in view of the pressures generated by the interest groups and the ever-present tension between the executive and legislative branches.

Congress has been critical of regulations writers who go beyond the intent of Congress when carrying out their responsibilities. While some officials have been guilty of creating new law in their zeal to champion the cause being addressed by legislation, Congress has also contributed to the problem. Often Congress uses vague or general phraseology (sometimes deliberately to avoid controversial reactions) and thus passes to the regulation writer the delicate problem of interpreting the language without specific guidance. At other times, Congress deliberately leaves the controversial task up to the executive branch as part of the partisan political battle. Examples of this can be seen in the areas of school busing, sex discrimination, occupational health and safety, and privacy legislation (Andringa 1976a).

The HEW Secretary's Work Group ("Report of . . ." 1976) observed that the regulations writers have assumed a "defensive posture" over the years because of pressures from the Congress and from the field. Thus writers, when in doubt concerning legislative intent, include every definition, topic, requirement, time limit, and penalty conceivable.

Time is frequently employed as a tactic in the regulation writing process. Representatives of higher education are told there is not sufficient time to employ a consultative approach to writing regulations but then, after the draft has been completed, deadlines and timelines are given as the justification for merely modifying or amending the draft regulations rather than rewriting them. In theory, opportunity for input from the field does exist, since there is a 30-day comment period on all proposed regulations once published in the *Federal Register*. In actuality, there is considerably less time for serious evaluation and analysis when considering the number of days required for delivery of the *Register*, which limits the time for interinstitutional communication as well as institutional communication with the agency involved. Even when comments are made, there is no assurance the regulation writers have given even the slightest consideration to them, since there is usually no obligation to explain reasons for rejecting or ignoring reactions from the field.

Other problems have been identified by colleges and universities related to the regulations writing process. Agencies not responsible for education but having jurisdiction over new regulations that impinge upon colleges and universities often develop requirements and provisions without any understanding of the ultimate impact on the institutions. The Office of Civil Rights assumed a hard line approach, which forced many colleges and universities to develop elaborate plans for seeking out qualified women and minority candidates for faculty positions; this was prompted by new affirmative action requirements and threat of cancellation of federal contracts near the end of the fiscal year. The *Washington Post* in an editorial called the requirements "preposterous and pointless." President Bok of Harvard discussed the same matter. He observed that millions of dollars had been expended by the institutions but the percentage of women and minorities employed in faculty positions across the country had risen only slightly from 1968 to 1975:

> Instead of making such a frontal attack, the government might have begun by making funds available for minority fellowships to produce more Ph.D.'s, by encouraging programs to enable women with families to at-

> tain greater opportunities for research, and by developing better data to assist universities in identifying promising women and minority candidates (Bok 1975, p. 2).

At times, regulation writers become involved in the power struggle between the executive and legislative branches of government. Congressman O'Hara, in testimony before the House Subcommittee on Equal Opportunities, addressed this matter by insisting that agencies establish their own priority to determine what regulations take precedence over others when the workload for new regulations is established. As a result, some provisions of law are relegated to limbo or are inoperable in the absence of proper regulations. In his 1974 testimony, O'Hara declared:

> It leads to the widespread view that the only real law in town is the regulation, and that until some GS-15 has explained the statute, there is no real law out there to concern anyone. Title IX is a good example. . . . Many . . . have accepted . . . the incredible provision that a law, enacted by the Congress and signed by the President in 1972, has not yet become effective, and will not until and unless a set of regulations is issued by the Executive Branch (U. S. Congress 1974, p. 4).

Regulations writers also attempt to "make law." O'Hara (1974) testified that proposed regulations for Title IX contained three provisions that went beyond congressional intent by mandating (1) internal grievance procedures, (2) institutional self-evaluation, and (3) institutional development and preservation of records of such self-evaluation. The hearings were conducted on House Conference Resolution 330, which was a requirement inserted by Congress that any regulations written for Title IX be returned to Congress for review before becoming official. This strategy was employed because of previous congressional criticism that regulation writers were going beyond the intent of Congress.

Few critics of federal intrusion have consciously credited many members of Congress, or government officials for that matter, with sincere concern over the encroachment and red tape that grows inexorably with each passing year. Nevertheless, Congress has shown some concern for the growth of regulations and paperwork. Specific actions toward remedies include a provision in the Education Amendments of 1972 that calls on a National Commission on the Financing of Postsecondary Education to address not only financing but also ways to improve the federal-institution interface. Congress also provided for an Advisory Commission on Inter-Governmental Relations and charged it to address the broader spectrum of federal programs and

regulations. More recently, the Secretary of HEW, David Mathews, appointed his committee on paperwork to address the growing complexities of federal regulations ("Report on . . .", 1976).

Congress sought to guarantee that no federal employee would interfere in the internal affairs of an educational institution by including Section 422 in the General Education Provisions Act, which read:

> No federal provision shall be construed to authorize any department, agency, office, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment of transportation of students or teachers in order to overcome racial imbalance (Federal Interagency Committee on Education 1974, p. 40).

Summary

A variety of issues mitigate against a simplistic solution to regulatory overkill. First, the constitutional authority under which the Federal Government became involved in supporting higher education is vague. While the spending power and the commerce power assigned to the Federal Government has been the basis for its involvement, a more subtle and complex question relates to whether the end justifies the means. There is a school of thought that the basic values inherent in the U.S. Constitution have guided our society in assuring that unwarranted means are not permitted, no matter how noble the end. The question is whether social and welfare goals of the Federal Government justify the coercive strategies employed to force compliance in higher education, which affects legitimate education and policy-making at the institutional level.

The strategic role of accreditation in higher education is in jeopardy because of its linchpin position between the Federal Government and colleges and universities in determining eligibility for federal programs. Consumer protection and accountability interests press on the Federal Government, which in turn has pressed for accrediting agencies to police and discipline their constituents. Yet, voluntary accreditation was born from a commitment to buffer higher education from the political pressures of government.

Working against a solution to the proliferation of federal programs and regulations is the organization of Congress itself. Diffusion of responsibilities through the committee system and the absence of any central coordinating mechanism results in hundreds of education programs coming under the jurisdiction of dozens of different

committees, almost all of which have other than educational assignments as their major responsibility. Therefore, it is not surprising to find a proliferation of agencies assigned to administer the program and a hodgepodge of requirements and expectations written into the legislation. Attempts to withdraw jurisdiction from any of various committees or to assign a unifying, even coordinating, authority to a single committee would result in loss of power; because of this, it is not likely many committees would surrender their jurisdiction.

The writers of regulations are in a different situation, charged on the one hand with interpreting congressional intent, which sometimes is deliberately vague, and on the other hand confronted with the concerns and sometimes conflicting views of constituent institutions. However, the tendency to develop initial regulation drafts in seclusion is not a viable approach. Preventive strategies have always proven superior to the alternative of remedial action; thus, involvemen of higher education during the design stages would aid in technical accuracy and in establishing a more receptive climate among those who will have to abide by the regulations.

The problems associated with federal regulation cannot be solved simply by calling on the national higher education associations to lobby for centralizing regulatory agencies or by reducing the number of reporting forms. Some attempts have been made at the federal level itself but much remains to be done.

Federal Accountability Versus Institutional Autonomy

> The issue now is not whether higher education needs to be made accountable, but whether the accountability movement itself can be made accountable (Cheit 1975, p. 30).

Much of the literature of higher education during the 1970s contains strong poles of sentiment that portray the difference between those who would champion accountability at the cost of institutional self-determination and those who insist that higher education institutions should be totally immune from any reporting or accountability activities. The extreme autonomy advocates seem to be saying to the Federal Government, "Tell us the game you want played; give us the money and let us alone." They do not expect the government to observe the game or even see that it has in fact been played. The accountability extremists of government, on the other hand, seem to be saying, "This is the game we want played and we would like you to play it, higher education; here are the rules of the game, here is how each player is to be assigned, and here is how each player shall perform."

These extremist positions are beginning to disappear as more temperate views gain support. Congress as well as federal agencies readily admit that reforms are needed to overcome regulatory excesses that have occurred as the federal machinery has sought to implement national priorities. Leaders in higher education seem willing to admit their responsibilities as well. Cheit succinctly states:

> Educators must first of all admit that regulation and review have come about largely because of their own failures, for example, in the field of affirmative action. . . . Where issues of access and employment opportunity are concerned, the least persuasive argument against regulation is the desire to do business as usual (Cheit 1975, p. 34).

Higher education must be alert and ready to repel federal intrusion. The National Commission on the Financing of Postsecondary Education in 1974 recommended that the Federal Government define and collect institutional unit cost data. Because they recognized that this represented the initial step toward performance audits and could lead to nationally prescribed uniform standards, representatives of higher education, including the American Council on Education,

vigorously opposed the recommendation. Though turned down at the time, Cheit (1975) predicted this recommendation would ultimately become a reality that could spell the end of broad decision-making powers at the institutional level. Higher education must oppose action that would undermine the academic and economic integrity, and therefore the autonomy of the institution. On the other hand, higher education cannot expect the Federal Government to be its patron, giving without any explanation or other form of accountability. There are simply too many other competing societal needs pressing for federal support.

An objective analysis of the issues related to the delicate balance between the need for federal accountability and the need for institutional self-determination, must be given serious consideration. This chapter outlines some of the factors associated with each.

Accountability

Congress is accountable to the electorate; therefore, in theory, demands for accountability from colleges and universities are in response to the sentiment of the people. Those serving in federal agencies who are responsible for developing and administering regulations similarly must be accountable; and many function daily with a conscious allegiance to that responsibility. However, the question remains, What represents accountability. There are those who perceive accountability as meaning documented proof that funds appropriated for a given purpose are spent for that purpose alone. Such an accountability dimension can be found in most federal reporting forms. Another perception of accountability is that a program required to address a social problem or goal is carried out qualitatively. Such accountability results in standards and criteria that are promulgated for many of the federal programs. However, what is "qualitative" is often a matter of opinion.

Leon Lessinger, former U. S. Associate Commissioner of Education, is credited by some with popularizing the idea of accountability of education while he was in office. He supported the concept in the Elementary and Secondary Education Act (ESEA) of 1965 by requiring a programmatic accountability in the public schools, which changed the curriculum to performance-based modes.

> It [ESEA] was a mandate not just for equality of educational opportunity, but for equity and results as well. . . . In essence, this meant that education would be expected to develop a 'zero reject system' which would guarantee equality of skill acquisition just as a similar system would guarantee the quality of industrial production (Lessinger and Tyler 1971, p. 9).

In 1970, Congress included three provisions in the ESEA Amendments that were viewed as mandates for accountability, including (1) data collection requirements, (2) performance criteria/objectives and evaluation of all programs, and (3) establishment of district-wide advisory councils for involvement in planning, implementation, and evaluation of such programs. This framework also can be seen in the federal posture toward accountability in higher education. Most officials would insist that the criteria and standards written into regulations as well as the reporting requirements are all aspects of the efficiency objectives and the educational effectiveness objectives of federal accountability.

The goal of federal accountability is equality of results rather than equality of opportunity, a perception that is at variance with the views of many in higher education. The contrast in views is clear in the approaches toward two major federal program thrusts. Recent federal regulations related to student financial assistance have attempted to impose upon institutions complex follow-up procedures so as to demonstrate what the institution has done for its students. On the other hand, most regulations that relate to affirmative action and discrimination tend to require input or process accounting of what the institution intends to do, how it is doing it, and so forth. End-product accountability does not seem to be the focus. Higher education seems to be diametrically opposed to the federal approach. Institutions proclaim that agencies responsible for affirmative action and discrimination should authorize higher education to provide an occasional report of what has been achieved and eliminate all of the input and process reporting. However, where students are concerned, higher education claims that assurance of access should be the only requirement, since what happens to the student is dependent upon factors beyond the purview of the institution, including attitude, motivation, and even the employment market.

To comprehend the point of view of those at the federal level in a position to place accountability demands upon higher education, there are a number of caveats that must be understood. First, Congress views higher education as a social service or function, not as different types of colleges and universities. Therefore, members of Congress view higher education in the same broad sense as health, welfare, or defense. This might be workable except that the so-called higher education community does not operate as a community of interest like health, welfare, and defense. Senator Claiborne Pell, one of the most influential legislators for higher education, suggested this by his remark that "education is a group endeavor, but educators

don't work as a group. Any community suffers if it is weakened by dissention and education is" (as quoted from Smith 1976, p. 32). Representatives of higher education speak of "higher education" but in reality only perceive the institutional type each represents. So that someone from a university, a private liberal arts college, or a community college who explained the problem of federal regulations would be addressing them from the perspective of their own institutional type. In most cases, Congress would be thinking of a broader educational perspective, which complicates the problem of accountability, since the social program goals of Congress are not as easily addressed by the diverse array of higher education institutions as many would expect. Therefore, regulations that tend to bring about commonality and uniformity are not viewed as dangerous or critical in the eyes of Congress; in the eyes of institutional representatives such regulations are critical to survival.

A second caveat is the need for honest acceptance of the fact that higher education represents a "lobby," even though it is fragmented and most inconsistent. And since that lobby is comprised of an array of factions representing a diversity of institutional types and interests, accountability of a member of Congress to his or her constituents on matters of education become complex. As different lobbies within higher education press upon the Congress and the executive agencies, it becomes a question of "whose ox will be gored," for each attempts to champion one's own cause at the expense of others. This is attested to by the array of national organizations housed in Washington, D.C. at One Dupont Circle; they represent not only different types of institutions but different interest groups within those institutions. The legislative goals of the National Association of State Universities and Land-Grant Colleges are not always the same as the goals of the Association of American Universities or the American Association of Community and Junior Colleges. Regulation changes sought by the American Association of Collegiate Registrars and Admissions Officers will not always be compatible with the interests or the constituents of the National Association of College and University Business Officers or the College and University Personnel Association.

Fortunately, many of the national organizations are beginning to communicate with each other and there are signs that a realization of the need to at least achieve coordinated efforts on some major policy areas has occurred. The American Council on Education has established a Policy Analysis Service to provide information for developing a legislative program that has gained considerable prestige in the Federal Government and among the national associations. However,

there has not as yet been a clear identification of the imperatives around which all should unite.

A third caveat is the fact higher education has created many of the federal intrusions because of its own internal bickering and internecine warfare. Federal pressures for state-level planning and coordination came as a consequence of struggle among colleges and universities in the 1960s. Competing for federal vocational education funds between the community colleges, branch campuses, and vocational-technical institutes resulted in "set-aside" mandates as well as stricter regulations on the use of such funds. And the struggle between private and public institutions over the formula for the BEOG payment ceiling of one-half tuition nearly led to an impasse in the Conference Committee that considered the 1976 Amendments. Senator Pell's observation that educators who do not work as a community weaken that community is quite true.

A fourth caveat is an attitude syndrome that deliberately or inadvertently developed, whereby the public and the Federal Government have perceived higher education as being an ivory tower enterprise. Numerous Congressmen have objected to the manner in which higher education officials have given testimony before their committees, which the Congressmen perceived to be condescending and contentious. This does not bode well, since higher education has earned the unenviable reputation of not having or presenting hard, factual, accurate information. Even many of the national associations of higher education have been embarrassed to learn that testimony prepared on the basis of institutional reports proved contradictory to information supplied by institutional representatives before the same congressional committees at different times.

Federal accountability cannot be satisfied by lofty claims that higher education has been responsible for all the greatness of America, any more than Congress will be satisfied that special consideration should be given higher education simply because of tradition. Rhetoric will no longer suffice. Factual information based on documented research is the only way higher education should deal with Congress.

Institutional Autonomy

Many have described the structure of higher education in this country as unique and fundamental. Institutional self-determination in higher education has resulted in a system that provides greater diversity, greater flexibility, and greater results than higher education in any other country in the world. The structure of having a strong and vigorous private or independent sector, with thousands

of lay persons serving on boards of trustees, has given the U.S. a guarantee that higher education will not be dominated by any political ideology or forced into a standard mold. The dynamic public sector has made it possible for higher education increasingly to be viewed as a right rather than as a privilege. More citizens of this country than any other in the world have an opportunity to seek the benefits of an educational experience almost from cradle to grave. The decentralized nature of higher education in this country has also permitted the educational programs to reflect the values and goals of a pluralistic society and allowed the search for new knowledge to occur in a free and humanitarian way. What, then, are the problems which federal regulation has placed upon institutional self-determination?

Governance — An immediate problem is the absence of any coherent national policy that would preserve the decentralized and self-determined structure of higher education. President Bok of Harvard (1975) warns that public officials must understand the reasons for the success of American higher education before tampering with either the structure or the operations of institutions. Congress attempted in a *de facto* manner to establish that higher education would not come under direct purview of the Federal Government when it provided for certification of institutional eligibility by the accrediting associations. But subsequent piecemeal legislation directed toward consumer protection and accountability for federal funds have blurred that goal considerably. In fact, the very purpose of accreditation is now at stake and the final results are not yet predictable.

Another governance problem resides at the state level, in some measure due to federal intrusion. After years of comparatively little recognition of the roles of state higher education planning and coordinating agencies and boards, the Education Amendments of 1972 provided a dramatic shift; it "literally has changed the ground rules, and, whether intentionally or not, has redefined the roles and responsibilities of institutions, states, and the government" (Millard 1976, p. 34). First, the 1972 Amendments deleted the words "higher education" and substituted the words "post-secondary education," thus changing the traditional concept of the educational system being comprised of elementary and secondary schools as part of basic education and colleges and universities as higher education. Such a shift has created problems of definition about what groups are to be involved in the planning process, the adequacy of management information systems, and the thrust of state-level planning itself.

The same amendments, by emphasizing student-centered funding, similarly required an adjustment at the state level and substantially modified the bases for budgeting and planning. Section 1202 of the Act resulted in a restructuring in most states, whereby the "1202 Commissions" were established either through augumenting or modifying existing boards or by creating entirely new ones. What effect the 1202 Commissions ultimately will have or what the impact of the various social legislation programs will be is not yet clear.

Cox and Harrell (1969) found that federal programs impeded state planning in various ways. In some cases federal funding patterns and shifts in funding forced reallocation of state monies. In South Carolina, the General Assembly enacted legislation in 1976 that required preapproval by the State Budget and Control Board of all federal funds, whether allocated to the state or to the public institutions in South Carolina. This was in direct response to the federal dislocation pressures on state planning, budgeting, and resource allocation.

Even noneducational legislation has contributed to the move toward greater state involvement. The Inter-Governmental Cooperation Act, implemented by the Office of Management and Budget A-95 Regulations, was identified in the report of the University of Iowa (1976) as forcing prior review of a number of university programs by local and state planning agencies before being submitted to the Federal Government. Many institutions also have found that proliferating reviews and approvals required locally, regionally, and by the state are due to federal, not state, legislation (Bender 1975).

The tax-exempt status of private colleges and universities has become the focus of IRS sanctions in carrying out its jurisdiction over discrimination activities. While it previously had accepted the "financial statistics" section of the HEGIS report, the IRS instituted a requirement as of January 1, 1975 that required institutions to use its own Form 990, Part II for this information. The very basis of the governance structure of private institutions is related to the tax-exempt provision. The HEW Secretary's Work Group estimated that an institution would need to expend up to $100,000 to revise its accounting system to comply with the IRS requirements ("Report of . . ." 1976, pp. 29-30). On January 8, 1977, Secretary Mathews officially adopted the recommendation of that Work Group, which included elimination of the IRS multiple requirement.

The ACE study on the cost of federally-mandated social programs revealed another unanticipated impingement on the governance of higher education. A gradual shift in federal tax policy, reflected in the social security legislation, from taxing income to taxing employment

has significantly depreciated the imputed tax advantage colleges and universities historically received from their tax-exempt status (Van Alstyne and Coldren, pp. 18-19). While the change does not reflect deliberate policy, it does nevertheless indicate how the governance of higher education has been affected by government policy. Many private institutions may find themselves one step closer to public takeover or extinction because of this federal shift.

Impingement Over Planning and Management — Another facet of institutional operation over which federal regulations often press relates to the planning and mangement of institutions. One of the organizational consequences of reporting has been the tendency for institutions to move toward centralization and away from decentralization of administrative function. This has been observed in studies undertaken by Duke University (1976) and the University of Iowa (1976). Furthermore, since additional administrators need to be employed to accommodate the complex regulations and associated paperwork, their ratio to the number of faculty has increased in most institutions. On the other hand, faculty are not aware of the external demands generating the additional numbers of administrators and conclude that the institution is being guided by self-serving administrators at the expense of instructional programs, faculty, and students. Even small institutions have found it imperative to add full-time professionals who have specialized in affirmative action, student financial aid, federal and state relations, grants-writing, and higher education law.

Institutions also have found it necessary to establish and organize data and information offices charged with collecting, processing, storing, and dispensing information in report formats that vary from annual to semiannual to quarterly to monthly to weekly and in some cases even daily, which are added to the volume of records created and maintained at the institutional, state, and federal levels. The timing of federal grants and funding shifts described for state planning agencies also influence the planning and management of the institution.

Finances — The third area of federal impact upon institutional autonomy relates to the financial aspects of federal programs. The subtle but significant costs of federally-mandated social programs increasingly has become a major consideration in the finance of colleges and universities. Over the past 10 years, the costs of social security contributions have increased over 300 percent and are still going up. The ACE study found that federally-mandated programs over

the past decade have resulted in costs that have increased faster than the rate of increase in instructional costs or in total revenues received by the institutions studied (Van Alstyne and Coldren 1976). Criticism of rising costs is the most frequent charge heard from colleges and universities, although relatively few have carried out any sophisticated cost studies internally. An exception is the University of Iowa (1976), which found, for example, that even where some federal support for administration of programs is provided, the institution ends up in the red. As observed earlier, the University of Iowa received $3 per benefit recipient, although the institutional cost is $20 per recipient.

Another area of increased cost has been the recruitment of personnel under regulations dealing with discrimination and affirmative action. *Change* magazine reported the price tag for affirmative action advertising it at least $6 million per year for colleges and universities, ". . . though few professional placements ever result from such national advertisements" ("Will Government . . ." 1976, p. 11).

Other Educational Programs and Services — The fourth area over which federal regulations have infringed upon institutional self-determination emerged primarily during the last few years: the intrusion of federal regulations into educational programs and services. In most cases these have modified educational policies and in other cases institutional procedures. One example is the Veterans' Administration, which has attempted to force institutions to adopt attendance taking and grading policies designed to assist the VA in its accountability. Forced modifications of policies over records and use of information by the Privacy Act is another. Conditions attached to many of the categorical programs concerning curricula for the disadvantaged or special services for other targeted groups similarly intrude into the educational policies of an institution. Regardless of whether the goals are desirable, the question is whether the means are justified.

These four areas—governance, planning and management, finance, and educational programs—are cornerstones to the success of American higher education. They are fundamental to the concept of institutional autonomy. The evidence is clear the Federal Government has begun to impose regulations and procedures that do impact in all four areas. In most cases, the intrusion has been subtle and without the deliberate intent to create a federal system of higher education; nevertheless, the dangers are great and must be dealt with

Summary

The purposes of governmental regulation are to promote uniform and equitable treatment of all parties being regulated and to set accountability indices that assure that the purposes for which monies have been appropriated are being served and the funds judiciously expended. Whenever evidence develops that the purposes are not being met or that funds are being poorly used, new provisions, new regulations, and added surveillance are legislated. The transgressions of the few impose the same additional punitive requirements on the many. The size and complexity of government generates a tendency to develop a new regulation for even the slightest infraction of the few and to apply it uniformly to all. Thus, much of the data collection requirements are fostered by individual cases that might better be addressed individually.

The federal perception of accountability is quite different than the perspective of colleges and universities. Congress thinks of education in terms of a social service, whereas educators think of it in terms of the institutional types they represent. The federal view of higher education is of a fragmented and dissention-plagued lobby, while higher education finds difficulty in admitting it is even involved in the lobbying process. Many federal regulations have been created in direct response to the internecine warfare and internal bickering among institutions of higher education, and many in Washington continue to perceive higher education as demanding special consideration on the basis of an unwarranted superiority complex.

Higher education, for its part, insists it cannot be treated the same as a business or industrial organization, and that government regulation and overregulation is clearly undermining the governance foundation of the institutions. Furthermore, effective planning and management at the institutional level has been jeopardized by the requirements of federal programs. The cost of administration and compliance of federal programs has become so great that some institutions estimate their financial structure is in jeopardy.

The question remains, How can the delicate balance between federal accountability and institutional self-determination be maintained? The middle road seems essential.

Some Recommendations

> Together we must examine the programs which now exist, and ask ourselves whether they still serve their intended purpose, or whether they need modification or replacement. Together we must consider new ways in which institutions of higher education — with assistance of their government, if it proves necessary — can devise new and better ways to get the job done (U. S. Congress, 1974, p. 3743).

President Magrath of the University of Minnesota called upon colleges and universities to sign a "peace treaty with Washington and observed that higher education must not permit disagreement with federal regulations and procedures to dissuade it from doing what is right. He stated:

> Most federal and state initiatives have proved beneficial, despite our frustrations from regulations. As a society, and as individual colleges and universities, we have needed a hard collective kick in the pants in a number of areas of critical social concern. Government has provided that needed kick, and we are, and will be, better off for it *(Chronicle of Higher Education,* July 6, 1976, p. 32).

One of the critical problems confronting higher education, and perhaps one of the most difficult to solve, is the need for all to work together, especially when interacting with Congress on the development of new legislation and in repelling the ills of overregulation and federal bureaucracy. The diversity of higher education, while clearly one of its great strengths, has in the past and may in the future obstruct the degree of unity necessary for higher education to be sufficiently accountable so that Congress will delegate responsibility and jurisdiction to higher education for defining the internal elements of accountability.

There are some who advocate a united voice for higher education; they insist that it is the only way sufficient leverage can be exerted upon Congress and the Federal Government. Others argue that the fragmented approach, while cumbersome and contributory to the burdens of regulation and overlapping agencies, serves higher education best. They see dangers of centralization and uniformity emanating from unity and believe the pluralistic approach insulates institutions against takeover. Neither view seems completely realistic.

All in higher education must work together to preserve or achieve basic principles related to academic and economic integrity. Beyond such fundamental guarantees, it would seem that higher education

can be better viewed as a complex with a myriad of institutional intents rather than as a system characterized by continuity of purpose.

A number of ideas are presented here that could result in a return in the future to the relationship of the Federal Government being a partner in the enterprise with the higher education "complex" rather than the controller of the higher education "system."

Magna Carta for Higher Education

It is recommended that a Magna Carta for higher education be established. Institutional autonomy and academic freedom have been claimed by many as historically accepted and inherently just guarantees to higher education. Some of the institutional objections to various federal regulations are rooted in that concept. However, not all citizens, including many Congressman and government officials, accept the legitimacy of such a claim on the part of higher education; but just as Kingman Brewster argued that the values the U.S. Constitution embodies represent a continuing force, so too is the general acceptance of the value of a high degree of self-determination a continuing force in higher education. The historic "self-denying ordinance" of the states toward higher education provides an example.

It is recommended that a Magna Carta for higher education be developed that clearly sets out those fundamental rights and privileges that will be faithfully guaranteed by Congress. The document must clearly establish the special nature of higher education and why it should be granted a charter of liberties. The values of the Constitution and the principles it represents for a free society of believers could well be the cornerstone of such a document.

Assuming such a Magna Carta were appropriately developed and its contents were based on solid and rational foundations rather than rhetoric and academic jargon, it could well be introduced into Congress for legislative enactment. The approach to developing such a document could involve many constituencies. The Education Commission of the States might well assume responsibility for giving direction for such an undertaking, since ECS does represent the states as well as higher education. ECS carried out a less complex task of a similar nature when it developed the model state legislation for approval of postsecondary educational institutions in 1973. A task force group of nationally respected leaders could develop working drafts that subsequently could be reviewed by public and private institutions, their governing boards, state legislatures, and the leadership of the respective national organizations of higher education. By garner-

ing such grass-roots support, efforts to win congressional acceptance would be enhanced.

An alternative approach might involve a national assembly supported by several foundations and higher education. Determination of the delegates might be patterned after the membership concept of Congress itself. The Senate for such an assembly might consist of two persons from each state, one coming from the public sector and one from the private sector. The House could be made up of representatives of the various interest groups determined by a formula. The formula might guarantee representation for research, graduate, professional, and undergraduate institutions, as well as representatives of all the national higher education associations that represent the various types of institutions and the different constituents within the institutions, ranging from faculty to alumni groups.

While there are undoubtedly other organizational approaches in the development of such a Magna Carta, the important thing would be to establish such a base of support that the product would become accepted by higher education in directing its conduct and by the Federal Government as reflecting a national consensus about higher education on which to base policy.

National Associations

The national associations, who represent the multitude of interest groups in higher education, have contributed to the problem of *ad hoc* and fragmented federal legislation affecting higher education. While the associations are essential in maintaining a voice with the Federal Government, their entrepreneur approach will continue to increase the problems of competing federal agencies, duplicative reporting, and increased bureaucracy as long as it continues. To alleviate this problem, the associations need to understand that their constituents want all of higher education championed first and their own cause included as part of that effort, and not the reverse. This will not be easy to achieve. It is recommended that a "United Nations" organizational structure be established as one means to enhance communication and public debate of the priorities for higher education legislation.

Assuming that the membership of the various associations were to ratify such a concept, a "United Nations of Higher Education Associations" might be formed with the purpose of avoiding the tragic consequences of internecine warfare and dissent that have plagued higher education in the past. The American Council on Education, the present umbrella organization for most national associations,

should take the leadership in implementing such a concept. The "Secretariat" of *One Dupont Circle* was organized to achieve a more harmonious working relationship among the associations within that building. Their proximity has, to some extent, brought more cooperation. The "Security Council" concept within the "United Nations" organization might well be employed to accommodate such issues as the determination of the scope of higher education encompassed and the priorities for national action. In a sense, just as world peace is honored as the overriding goal of the UN, so the fundamental tenets of self-determination, institutional autonomy, and academic freedom would be the fundamental tenets of the proposed organization. Such a design should enhance the posture of spokespersons addressing congressional committees, for it would provide unity for the overriding purposes and yet enable national associations to be partisan to their own interests within the context of the larger purpose.

Regulation Reforms

A legacy of HEW Secretary David Mathews to higher education may well be the proposed reforms submitted to the incoming Carter Administration. These could be used as a basis to reorganize agency jurisdictions and reduce bureaucratic red tape. Secretary Mathews had been a critic of government's rule-making and reporting requirements even while president of the University of Alabama. His firsthand experience with the impact of federal regulations on a university surely motivated many of his actions when he became Secretary. He created an Office of Regulatory Review that was aimed at internal reassesment and redirection. In addition, he designed the work group described earlier that developed 15 recommendations for reforms. On January 8, 1977, Secretary Mathews officially transmitted many of those recommendations to President Ford. The major recommendation would assign responsibility for all regulations to a "cognizant agency" that would reduce or eliminate overlapping and conflicting reulations among agencies. Furthermore, under the proposal the Office of Management and Budget would be required to identify the real "burden" to higher education of proposed regulations.

It is recommended that all of higher education see to it that the new Administration gives serious attention to the proposals for reform developed under Secretary Mathews. If the Carter Administration does not implement those recommendations, then colleges and universities together with their national associations should press vigorously to see that some other alternate plan is developed so that

needed reforms are made. Action on the part of higher education advocates during this year is essential to convince the new Administration of higher education's strength of purpose and will.

Among reforms sought should be clear involvement of higher education institutions during the design stages of new regulations. In addition, reporting focus should be centered on results (employee data, for example, rather than applicant data), which would end the predeliction of federal agencies to document everything related to the end product. Furthermore, the concept of trial regulations should be examined, whereby some pilot institutions voluntarily work with the regulation's agency over a trial period to test the soundness and effect of new requirements. If this approach had been taken with some of the controversial programs in the past, the furors which took place could have been avoided.

Educational Impact Statement

It is recommended that the concept of an economic impact statement proposed by President Olds of Kent State University be supported by higher education. Under this concept, agencies developing regulations would be obligated to determine the economic impact on institutions of higher education caused by the cost requirements for implementation and administration. This would be particularly beneficial for programs enacted by Congress that are not directed specifically toward higher education, as the ACE study demonstrated (Van Alstyne and Coldren 1976). Under President Olds' plan, Congress could anticipate some standard of reasonable costs for implementing the law; then agencies developing regulations that impose greater financial burdens would be required to modify the regulations or reimburse institutions for the additional costs.

The recommendation of HEW Secretary Mathews that the Office of Management and Budget identify the real "burden" of reportorial forms does not include the cost analysis called for under Olds' proposal. It does require estimates of manhours needed to complete each form.

ACE Task Force

It is recommended that the American Council on Education esablish a task force charged with studying the appropriate organizational structure at the federal level to deal with higher education. The present trend toward centralization of power is antithetical to the ends being sought by higher education; since governmental reorganization is a possibility over the next several years, higher education

should take the initiative and develop a convincing vision. Instead of waiting for something to happen and then reacting, colleges and universities should begin serious study of the alternatives that would best serve the higher education and nation.

An Institute for Independence

It is recommended that the proposal of President Elliott of The George Washington University for an Institute for the Preservation of Independence of Higher Education be supported (Elliott 1976). Under this concept, the Institute, free of any governmental obligations, would examine all existing federal laws and regulations and carry out objective studies of the actual effects they have on colleges and universities. The Institute would provide objective studies and broad scale surveillance of existing or new legislation and regulations and would enable Congress as well as colleges and universities to have objective information on cost and on any internal infringement associated with them.

Not all of these recommendations can be implemented immediately. But institutions can begin studying the true impact of federal regulations on costs and program direction. Leaders can articulate to the public, Congress, and the Carter Administration that preservation of the independence of higher education represents one of the most critical problems confronting America today. Representatives of national educational associations together with institutional leaders and federal officials can develop bridges for better communication and more consultation before the problem comes into being. And federal agencies can continue the efforts initiated by HEW Secretary Mathews to curtail or eliminate proliferation of overlapping jurisdictions, duplication of regulations, and multiple information-collecting agencies.

Bibliography

The ERIC Clearinghouse on Higher Education abstracts and indexes the current research literature on higher education for publication in the National Institute of Education's monthly *Resources in Education* (RIE). Readers who wish to order ERIC documents cited in the bibliography should write to the ERIC Document Reproduction Service, Post Office Box 190, Arlington, Virginia 22210. When ordering, please specify the ERIC document number. Unless otherwise noted, documents are available in both microfiche (MF) and hard/photocopy (HC).

Alexander, Kern, and Solomon, Erwin. *College and University Law.* Charlottesville, Virginia: Michie Company, 1972.

Andringa, Robert C. "A COMPACT Interview: 'We'll Just Make it a Federal Program.'" *Compact* 9 (August 1975): 6-10.

———. "Is Congress the Problem or the Solution? The View From the Hill." *Change* 8 (April 1976a): 26-30.

"Another Campus Revolt—This Time Against Washington." *U.S. News & World Report* (July 5, 1976b): 91-94.

Arnstein, George. "Is There Fraud in Education?" *Change* 8 (December 1976): 10-11.

Babbidge, Homer D. and Rosenzweig, Robert M. *The Federal Interest in Higher Education.* New York: McGraw-Hill, 1962.

Bender, Louis W. *The States, Communities, and Control of the Community College. Issues and Recommendations.* Washington, D.C.: American Association of Community and Junior Colleges, 1975.

——— and Simmons, Howard L. *One Dupont Circle: National Influence Center for Higher Education?* Tallahassee: Florida State University, Center for State and Regional Leadership, 1973.

Berdahl, Robert O. *Statewide Coordination of Higher Education.* Washington, D.C.: American Council on Education, 1971.

Blocker, Clyde E.; Bender, Louis W.; and Martorana, S.V. *The Political Terrain of American Postsecondary Education.* Fort Lauderdale: Nova University Press, 1975.

Bok, Derek C. *The President's Report 1974-1975.* Cambridge: Harvard University, 1975.

Brewster, Kingman, Jr. Excerpts of address before the Fellows of the

American Bar Foundation, reprinted in *Congressional Record*, 94th Congress, 1st Session, 10 March 1975, p. S3515-7.

Carnegie Commission on Higher Education. *Quality and Equality: New Levels of Federal Responsibility*. New York: McGraw-Hill, 1970.

Cheever, Daniel S. "Harvard and the Federal Government." *The Graduate Journal* 5 (1962): 121-135.

Cheit, Earl F. "What Price Accountability?" *Change* 7 (November 1975): 30-60.

Colleges and Universities Speak Out on Cost of Federal Compliance in Higher Education. A Special Report. Atlanta, Ga.: Southern Association of Colleges and Schools, Commission on Colleges, December 1976.

Conrad, Clifton and Cosand, Joseph. *The Implications of Federal Education Policy*. ERIC/Higher Education Research Report No. 1. Washington, D.C.: American Association for Higher Education, 1976. ED 124 0[illegible]. MF-$0.96; HC-$3.80.

Cox, Lanier and Harrell, Lester E. *The Impact of Federal Programs on State Planning and Coordination of Higher Education*. Atlanta: Southern Regional Education Board, 1969.

Cronin, Joseph M. "The Federal Takeover: Should the Junior Partner Run the Firm?" *Phi Delta Kappan* (April 1976): 499-501.

Dickey, Frank. Statement to Special Subcommittee on Education. Committee on Education and Labor, House of Representatives, July 18, 1974. *Hearings*, pp. 87-99.

Elliott, Lloyd H. *On the Frontiers of Knowledge: Sponsored Research at The George Washington University*. President's Annual Report. Washington, D.C.: The George Washington University, 1976.

Enarson, Harold L. "The Endangered Partnership." Council for Advancement and Support of Education. *Collage* 2 (September, 1976a): pp. 4-9.

———. "Restoring the Partnership." Remarks prepared for presentation to the Ohio Congressional Delegation, Washington, D.C., June 1, 1976b. Mimeographed.

Eulau, Heinz and Quinley, Harold. *State Officials and Higher Education*. New York: McGraw-Hill, 1970.

Federal Interagency Committee on Education, Subcommittee on Educational Consumer Protection. "Toward a Federal Strategy for Protection of the Consumer of Education." Washington, D.C.: FICE, December 18, 1974.

Finkin, M. W. "Federal Reliance on Voluntary Accreditation: The

Power to Recognize as the Power to Regulate." *Journal of Law and Education* 2 (July 1973).

Finn, Chester E. Jr. "Federalism and the Universities: The Balance Shifts." *Change* 7 (Winter 1975-76): 24.

Fleming, Joe W. and Zollar, Carolyn. "Feds To Get $ Act Together." *Compact* 10 (Spring 1976).

Flygare, Thomas J. "Can Federal Courts Control an Educational Program?" *Phi Delta Kappan* (April 1976): 550-551.

Furniss, W. Todd. "Horse Sense About Government Controls." *Educational Record* 56 (Fall, 1975): 231-39.

Gell, Robert L. and Munson, Ann. "A Study of the Cost of Completing Reports for External Agencies." Montgomery County, Maryland: Montgomery Community College, fiscal year 1975-1976. Mimeographed.

Glenny, Lyman A. *Autonomy of Public Colleges.* New York: McGraw-Hill, 1959.

Halperin, Samuel. "Is the Federal Government Taking Over Education?" *Compact* 10 (Summer 1976): 2-4.

Halstead, D. Kent. *Statewide Planning in Higher Education.* Washington: U.S. Government Printing Office, 1974.

Harcleroad, Fred F. *Institutional Efficiency in State Systems of Public Higher Education.* Tucson: University of Arizona, 1975.

"Higher Education Strangling in Federal Redtape." *Congressional Record* (September 9, 1976): H9662-H9663.

Honey, John C. and Crowley, John C. *The Future of the American Council on Education: A Report on Its Governmental and Related Activities.* New York: Alfred P. Sloan Foundation, September 1972.

——— and Hartle, Terry W. *Federal-State-Institutional Relations in Postsecondary Education.* Syracuse, New York: Educational Finance and Governance Center. Syracuse University Research Corporation, February 1975.

"Impact of Federal Regulations on the University of Iowa." A compilation of campus-wide responses. University of Iowa: Office of the Vice President for Educational Development and Research, April 10, 1976. Mimeographed.

Kaplin, William A. *Respective Roles of Federal Government, State Governments, and Private Accrediting Agencies in the Governance of Postsecondary Education.* A report prepared at the request of the Council on Postsecondary Accreditation, July 1975.

Kirkwood, Robert. Statement to Special Subcommittee on Education. Committee on Education and Labor, House of Representatives, July 18, 1974. *Hearings,* pp. 100-148.

Lessinger, Leon M. and Tyler, Ralph W., eds. *Accountability in Education*. Worthington, Ohio: National Society for the Study of Education, 1971.

Magarell, Jack. "Freedom of Education: A Constitutional Right?" *Chronicle of Higher Education* 8 (October 25, 1976): 8.

Magrath, C. Peter. "Colleges and Washington Need to Sign a Peace Treaty." *The Chronicle of Higher Education* 8 (July 6, 1976).

Martens, Mary. "Federal Regulations and Discrimination Issues." In *Resource Notebook on the Federal Government and the Small Private College*. Washington, D.C.: Council for the Advancement of Small Colleges, June 1976. Mimeographed.

Mathews, F. David. "Carnegie and Newman: Higher Education in Traction." *Saturday Review World* (February 9, 1974): 63-64.

Mathews, John. "Report from Washington: Is There a 'State View' on Education Matters?" *Compact* 9 (August 1975): 11-13.

McGill, William J. "Government Regulation and Academic Freedom." A paper read at University Centers for Rational Alternatives Conference at the George Washington University, Washington, D.C. 11 December, 1976. Mimeographed.

Millard, Richard M. *State Boards of Higher Education*. ERIC/Higher Education Research Report No. 4. Washington: American Association for Higher Education, 1976. ED 129 196. MF-$0.96; HC-$4.97.

Miller, Judith. "Hard Times for Academic R & D." *Change* 7 (December/January 1975-76): 48.

Muirhead, Peter P. Statement to Special Subcommittee on Education, Committee on Education and Labor, House of Representatives July 18, 1974. *Hearings*, pp. 20-53.

Oaks, Dallin H. "A University President Looks at Government Regulation." An Address to the Association of Governing Board of Universities and Colleges, St. Louis, Missouri, September 18, 1976. Mimeographed.

Olds, Glenn A. Testimony before the House Subcommittee on Postsecondary Education concerning Reauthorization of the Higher Education Act, as amended. Presented in behalf of the National Association of State Universities and Land-Grant Colleges, 28 October, 1976. Mimeographed.

O'Neill, Robert M. *The Courts, Government and Higher Education*. Washington, D.C.: Committee for Economic Development, 1972.

Perrin, Robert. "Making Everybody Into a Minority." *The Washington Post*, February 10, 1975.

Porter, Sylvia. "Regulatory Agencies, Good, Bad." *Tallahassee Democrat*, November 30, 1976, p. 6.

Powell, Arthur G. "Harvard's School of Education and the Federal Government: Institutional Effects of Interaction in the 1960s." A paper read at University Centers for Rational Alternatives Conference, at The George Washington University, Washington, D.C., 11 December, 1976. Mimeographed.

Rainsford, George. *Congress and Higher Education in the Nineteenth Century*. Knoxville: University of Tennessee Press, 1972.

Relihan, Walter J. Jr. "Means and Ends: The Evolution of Federal Administrative Doctrine on Equal Employyment Opportunity." *Journal of College and University Law* 1 (Fall 1973): 33-37.

"Report of the Secretary's Work Group for Consolidation and Simplification of Federal Reporting Requirements for Institutions of Higher Education." Washington, D.C.: Department of Health, Education, and Welfare, October 15, 1976. Mimeographed.

Resource Notebook on the Federal Government and the Small Private College. Washington, D.C.: Council for the Advancement of Small Colleges, June 1976.

Rivlin, Alice. *The Role of the Federal Government in Financing Higher Education*. Washington: Brookings Institution, 1961.

Saunders, Charles B. Jr. "Association View of Federal Impact on Education."*Educational Record* 56 (1975): 89-95.

———. "'Regulating the Regulators." *The Chronicle of Higher Education*, March 22, 1976.

The Second Newman Report: National Policy and Higher Education. Cambridge: MIT Press, 1973.

Simon, William E., U. S. Secretary of the Treasury. "Some Parting Advice on the Economy." *U.S. News & World Report* (December 13, 1976): 23-26.

Smith, C. Fraser. "Speak Softly and Carry a Small State." *Change* 8 (December 1976): 30.

Stevens, Harrie J. "Federal Categorical Programs." In *Resource Notebook on the Federal Government and the Private Small College*. Washington: Council for the Advencement of Small Colleges, June 1976. Mimeographed.

U. S. Congress, House, Hearings before the Special Subcommittee on Education of the Committee on Education and Labor. *Accreditation*. July 18 '9, 25, 1974. Washington, D.C.: U.S. Government Printing Office, 1974.

U.S. Congress, House. Hearing before the Subcommittee on Equal Opportunities of the Committee on Education and Labor, *H. Con. Res. 330*, July 14, 1975. Washington, D.C.: U.S. Government Printing Office, 1975.

University of Wisconsin. *Report on Questionable Federal Regulatory Activity*. Madison: University of Wisconsin, Office of the Chancellor, February 11, 1976. Mimeographed.

Van Alstyne, Carol. "The Economic Costs of Federally Mandated Social Programs in Higher Education." An address presented before CUPA's National Seminar, 15 January, 1976, Los Angeles, California. Mimeographed.

———and Coldren, Sharon L. *The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities*. Washington, D.C.: American Council on Education, June 1976.

Venn, Grant. *Man, Education and Work: Postsecondary Vocational and Technical Education*. Washington, D.C.: American Council on Education, 1964.

"Will Government Patronage Kill the Universities?" An Editorial. *Change* 7 (Winter 1975-76): 10-61.

Winkler, Karen J. "Government Rulemaking: Any Hope for Simplification?" *Chronicle of Higher Education*, December 20, 1976, p. 5.

———. "Proliferating Federal Regulations: Is Government Now 'The Enemy'?" *Chronicle of Higher Education*, December 13, 1976, p. 3.

1976 Reports Still Available

1. Implications of Federal Education Policy
   Clifton Conrad and Joseph Cosand

2. Higher Education and the Economy
   Hans H. Jenny

3. Academic Power in the United States
   Burton R. Clark and Ted I. K. Youn

4. State Boards of Higher Education
   Richard M. Millard

5. Private Higher Education and Public Funding
   Louis T. Benezet

6. Enrollment Trends in Higher Education
   Carol Herrnstadt Shulman

7. The Socialization Process in Higher Education
   Ann Kieffer Bragg

8. Faculty Development and Evaluation in Higher Education
   Albert B. Smith

9. Accreditation and Institutional Eligibility
   David A. Trivett

10. Student Rights, Decisionmaking, and the Law
    Terrence N. Tice

Copies of any of the titles listed above are available for $3 each. To order, write to the Publications Department, American Association for Higher Education, One Dupont Circle, Suite 780, Washington, D. C. 20036. Payment must accompany all orders under $15.

To subscribe to the complete series of 1977 reports (10 issues), write to the Publications Department, American Association for Higher Education, One Dupont Circle, Suite 780, Washington, D. C. 20036. The subscription rate for AAHE members is $20, for nonmembers $30. Single issues are available at $3.50 per copy.